

In The Matter Of:

*Donna A. Olson and Robert M. Olson v.
Brenntag North America, Inc. et al*

March 5, 2019

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1
2 SUPREME COURT OF THE STATE OF NEW YORK
3 COUNTY OF NEW YORK - CIVIL TERM - PART 7
4 -----X
5 DONNA A. OLSON and ROBERT M. OLSON,
6
7 Plaintiff,
8
9 -against- Index No.
10 190328/2017
11
12 BRENTAG NORTH AMERICA, INC.;
13 BRENTAG SPECIALTIES, INC.,
14 Individually, and f/k/a Mineral Pigment
15 Solutions, Inc., as successor-in-interest to
16 Whittaker, Clark & Daniels, Inc.,
17 CYPRUS AMAX MINERALS COMPANY,
18 Individually and as successor-in-interest to
19 American Talc Company, Metropolitan Talc
20 Company, Inc., Charles Mathieu, Inc., and
21 Resource Processors, Inc.;
22 IMERY'S TALC AMERICA, INC.,
23 JOHNSON & JOHNSON CONSUMER, INC.;
24 WHITTAKER, CLARK & DANIELS, INC.,
25 Individually and as successor-in-interest
To American Talc Company, Metropolitan Talc
Company, Inc., Charles Mathieu, Inc., and
Resource Processors, Inc.;
Defendants.
-----X
Jury Trial 60 Centre Street
New York, New York
March 5, 2019
B E F O R E:
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JUSTICE
A P P E A R A N C E S:
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BY: JEROME H. BLOCK, ESQ.,

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Official Court Reporters
* * *

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1
2 MR. BLOCK: Could you mark these in evidence.
3 (Whereupon Plaintiffs' Exhibit No. 322 was marked
4 received in evidence as of this date.)
5 (Whereupon Plaintiffs' Exhibit No. 56 was marked
6 received in evidence as of this date.)
7 (Whereupon Plaintiffs' Exhibit No. 330-A was marked
8 received in evidence as of this date.)
9 (Whereupon Plaintiffs' Exhibit No. 348 was marked
10 received in evidence as of this date.)
11 THE COURT: Ready? Thank you so very much. Good
12 morning. I understand that with regard to the evidentiary
13 issues, plaintiff would like to argue. Go ahead.
14 MS. SAMADI: Yes, your Honor. Margaret Samadi on
15 behalf of the plaintiff. Your Honor, I would like to make a
16 few points regarding the adverse event reports discussed at
17 length yesterday. First, we want to point out that Dr.
18 Moline's opinion does not rely solely on Johnson & Johnson's
19 individual adverse inference report, rather as you heard, it
20 relies on her extensive medical education, background,
21 experience, reasoned scientific methodology, generally
22 accepted scientific and medical principles.
23 THE COURT: More slowly, please.
24 MS. SAMADI: Generally accepted scientific medical
25 principles regarding the link between asbestos and

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1 mesothelioma and personal knowledge gained from treating
2 mesothelioma patients. Many of the cases cited by Johnson &
3 Johnson preclude expert testimony when it is the sole --
4 based solely on adverse reports or and nothing else. For
5 example, Heckstall versus Pincus case, that's 797 N.Y.S.2d 2
6 445 out of the First Department. There the expert relied
7 solely on "unverified listings and recording of adverse
8 reactions". That's not what's happening here. The same
9 with Saarai case, S-A-A-R-A-I. In New York case reports can
10 supplement opinions based on other substantive evidence. I
11 would like to point the Court to Zito versus Zabarsky case,
12 28 A.D.3d 42. And I've given the Court a copy. That's out
13 of the Second Department in 2006. And in that it was held
14 that the trial court erred in excluding causation expert
15 testimony that relied upon a single case study coupled with
16 generally scientific theory of the dose response
17 relationship and other scientific --
18 THE COURT: A little bit more slowly, please.
19 Because I'm trying to digest everything you're telling me.
20 MS. SAMADI: Okay -- and other scientifically
21 accepted methodology. So, your Honor, the issue is twofold.
22 Whether the adverse event reports are admissible and whether
23 Dr. Moline may reference the adverse event reports in her
24 testimony. Plaintiffs believe the answer is yes to both
25 inquiries. But if the Court believes one or the other, the

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<p>1 answer should be no. I would like to point out that that</p> <p>2 does not preclude the answer to be yes for the other</p> <p>3 inquiry.</p> <p>4 So first adverse inference or adverse event</p> <p>5 reports --</p> <p>6 THE COURT: Right.</p> <p>7 MS. SAMADI: -- are admissible as they are evidence</p> <p>8 of prior incidents that are substantially the same as the --</p> <p>9 as that alleged by plaintiffs. Here its use of Johnson's</p> <p>10 Baby Powder caused mesothelioma. I won't belabor the cases</p> <p>11 that --</p> <p>12 THE COURT: So, would you be allowed simply to file</p> <p>13 the complaints and in all those cases, the summonses, the</p> <p>14 complaints, the pleadings and just give them to the jury?</p> <p>15 MS. SAMADI: I don't believe that's the case here,</p> <p>16 no.</p> <p>17 THE COURT: But isn't that a related issue?</p> <p>18 Because the jurors are going to think wow, there are a lot</p> <p>19 of people who are suing for this and let's be true.</p> <p>20 MS. SAMADI: That's certainly something Johnson &</p> <p>21 Johnson can bring out on cross and point out. But that's</p> <p>22 not what we have here.</p> <p>23 THE COURT: How do we know all of those complaints</p> <p>24 are related to the plaintiffs in this case? To Ms. Olson?</p> <p>25 MS. SAMADI: Well --</p>		<p>1 to bolster their interest in saying there are a lot of</p> <p>2 complaints, therefore there must be something to this?</p> <p>3 MS. SAMADI: They are confirmed cases of</p> <p>4 mesothelioma. And I think it would also require evidence on</p> <p>5 Johnson & Johnson's behalf that there are all of these</p> <p>6 members of the bar fraudulently filing cases everywhere. I</p> <p>7 mean, that would certainly be unethical and improper. If</p> <p>8 they want to allege that in some way, again it goes to the</p> <p>9 weight of the evidence. It doesn't go to its admissibility.</p> <p>10 I would like to point out, your Honor, this case</p> <p>11 Berger v. Amchem Products, 13 Misc 3d 335. It is written</p> <p>12 by --</p> <p>13 THE COURT: Yeah. Judge Friedman, sure.</p> <p>14 MS. SAMADI: Yeah. She wrote a great treatise on</p> <p>15 some New York evidentiary law. But if you look at her</p> <p>16 language in that case she cites multiple asbestos cases</p> <p>17 where case reports are relied upon. Then at the very end</p> <p>18 she ultimately decides a Frye hearing is unnecessary for</p> <p>19 what we call the chrysotile defense. That's General Motors</p> <p>20 for other friction defendants relying on wanting to push out</p> <p>21 plaintiffs' experts in part because they rely on case</p> <p>22 studies. At the very end she denies them a Frye hearing and</p> <p>23 says "Scientist and physicians use various means to</p> <p>24 establish causation in particular situations, not the least</p> <p>25 of which are toxicological and pathological studies and</p>	
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<p>1 THE COURT: What's the relationship?</p> <p>2 MS. SAMADI: -- I would point to the Bellinger v.</p> <p>3 Deere and Co. case where it said admitting other evidence in</p> <p>4 product liability actions is appropriate when the similarity</p> <p>5 of the accident is based upon the same product at issue.</p> <p>6 And the same product at issue here is Johnson's Baby Powder.</p> <p>7 And the same injury at issue here is mesothelioma or cancer.</p> <p>8 So I would say it is definitely related. And differences,</p> <p>9 I'm reading from that case, differences in the surrounding</p> <p>10 circumstances go to the weight to be given to the evidence</p> <p>11 rather than admissibility. So, Johnson & Johnson is free to</p> <p>12 point out on cross hey, we don't know anything about these</p> <p>13 plaintiffs or, you know, what do you know about them. The</p> <p>14 fact is, this is a document that came --</p> <p>15 THE COURT: Who are they going to cross for the</p> <p>16 adverse events reports?</p> <p>17 MS. SAMADI: Well, your Honor. They have all of</p> <p>18 the information. So they may have documentary evidence</p> <p>19 about this. They are certainly free to address it in their</p> <p>20 corporate representative if they want. They could even, you</p> <p>21 know, they could even ask Dr. Moline if she shows, although</p> <p>22 I doubt she does, but this is something that goes to the</p> <p>23 weight of the evidence.</p> <p>24 THE COURT: How do we know that it's not just a lot</p> <p>25 of plaintiffs' side lawyers filing lots of complaints just</p>		<p>1 documented case studies."</p> <p>2 So, in asbestos, your Honor, this has been -- case</p> <p>3 studies are regularly relied upon. Yesterday the doctor or</p> <p>4 my colleague pointed out to the Bogner study in 1960, where</p> <p>5 there was only 33 cases that was relied upon. And that was</p> <p>6 enough for a causation to be published. Dr. Moline's own</p> <p>7 testimony --</p> <p>8 THE COURT: Just a moment. I'm wondering whether</p> <p>9 you're melding the arguments about the case studies with the</p> <p>10 adverse events reports and whether there is a distinction.</p> <p>11 Let's first, if it's okay, talk about the case study. Are</p> <p>12 the patients representative? Because they came to the</p> <p>13 doctor in the context of litigation, right? Are the case</p> <p>14 studies of the individuals about whom Dr. Moline can testify</p> <p>15 with regard to the case studies, are they -- didn't they --</p> <p>16 are they representative?</p> <p>17 MS. SAMADI: I believe they are. And you heard her</p> <p>18 yesterday say that her opinion doesn't change whether or not</p> <p>19 a case comes through litigation or any other factor. So,</p> <p>20 she said that doesn't matter to her opinion. Insofar as</p> <p>21 they -- You might think they are self selecting in any way,</p> <p>22 that is -- again goes to the weight of the evidence and</p> <p>23 something that Johnson & Johnson can point out and try to</p> <p>24 disclaim or something of that fact.</p> <p>25 THE COURT: Would it -- Do you know whether she</p>	

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<p>1 talked to people with similar usage levels of talcum?</p> <p>2 MR. BLOCK: Your Honor, could I address that?</p> <p>3 THE COURT: No. She's doing great. Come on.</p> <p>4 MS. SAMADI: Of course Dr. Moline can testify to</p> <p>5 details of people that she has seen. I don't believe we</p> <p>6 know the amount used in the adverse event reports, but if it</p> <p>7 is different -- Some of them might state it. I'm not sure.</p> <p>8 But if it is different, again we have heard testimony in</p> <p>9 this case from Dr. Moline and Dr. Webber that very small</p> <p>10 amounts of asbestos in talc can cause mesothelioma. So --</p> <p>11 so, you know, and that there is no safe level is what Dr.</p> <p>12 Moline said. So, it doesn't really particularly matter, as</p> <p>13 long as there is some asbestos.</p> <p>14 THE COURT: Were her case studies published?</p> <p>15 MS. SAMADI: I do not believe so. But this is her</p> <p>16 personal --</p> <p>17 THE COURT: Were they peer reviewed in some ways?</p> <p>18 MS. SAMADI: I don't believe so. Excuse me. I</p> <p>19 want to clarify. Are we talking about the 40 and 50 cases?</p> <p>20 THE COURT: Yes. I think that there is a</p> <p>21 difference between how we're to view the adverse events</p> <p>22 evidence and the case study evidence, although both have a</p> <p>23 lot in common. There are still plenty of differences. I</p> <p>24 want to talk about each one separately. The case studies,</p> <p>25 Dr. Moline's case studies.</p>		<p>1 the makeup of these products. She is able to give that</p> <p>2 testimony based on personal knowledge.</p> <p>3 THE COURT: I need to know whether there is</p> <p>4 something that would establish a causal link between --</p> <p>5 beyond simple association. So, is her testimony going to be</p> <p>6 that the patients in these studies have mesothelioma. The</p> <p>7 only thing that causes mesothelioma is asbestos exposure.</p> <p>8 The only possible source of asbestos exposure in their lives</p> <p>9 beyond ambient background exposure is talc. Therefore,</p> <p>10 their mesothelioma was caused by asbestos in talc rather</p> <p>11 than something else.</p> <p>12 MS. SAMADI: Yeah. I believe she can say that</p> <p>13 these people had substantially similar exposures to</p> <p>14 Mrs. Olson. I would like to point back to the Berger case</p> <p>15 where Justice Friedman said this is not -- this is not new</p> <p>16 evidence. This is not new science that asbestos causes</p> <p>17 mesothelioma.</p> <p>18 THE COURT: How much asbestos do you think the</p> <p>19 patients in the other studies were exposed to compared to</p> <p>20 Ms. Olson's here? Meaning, did she use potentially asbestos</p> <p>21 contaminated talc products more often, less often, as often</p> <p>22 as the patients in the other studies? And does that matter?</p> <p>23 The theory of disease ideology. I need to know what the</p> <p>24 relationship between the case study -- case studies and</p> <p>25 Ms. Olson.</p>	
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<p>1 MS. SAMADI: Okay. Sorry. Your Honor, they are</p> <p>2 not published yet, but they are based on her personal</p> <p>3 knowledge. And that's another thing that experts are able</p> <p>4 to testify about. Your Honor, she has published case</p> <p>5 studies on asbestos and very small amounts of asbestos. I</p> <p>6 would point to her dental tape study that was peer reviewed</p> <p>7 and published that she testified about yesterday, and there</p> <p>8 were only six cases in that -- in that study. She was able</p> <p>9 to peer review, get that through the peer-review process and</p> <p>10 draw a causal connection.</p> <p>11 THE COURT: How do we know that the people in her</p> <p>12 study were exposed to asbestos in their talc? Did the --</p> <p>13 did the talc itself in the products they use test positive</p> <p>14 for asbestos?</p> <p>15 MS. SAMADI: Well, it's impossible to test products</p> <p>16 that are already used, but we do have testimony from Dr.</p> <p>17 Webber and Dr. Longo, I believe, that a large percentage of</p> <p>18 Johnson & Johnson's talc product would contain asbestos.</p> <p>19 And oh, and she can give that testimony apparently. She</p> <p>20 will lay the foundation for that.</p> <p>21 THE COURT: How?</p> <p>22 MS. SAMADI: Based upon her knowledge of the</p> <p>23 products used in those cases for her clients that she has</p> <p>24 seen, just as she did here for the products used in this</p> <p>25 case. She has looked at internal documents. She does know</p>		<p>1 MS. SAMADI: That is something Dr. Moline can</p> <p>2 certainly testify about and lay a foundation for. She is</p> <p>3 able to say that these cases are substantially similar to</p> <p>4 plaintiffs in this case. And if they want to cross examine</p> <p>5 her about how it's how similar, they are -- they are</p> <p>6 certainly able to do that. That doesn't mean the testimony</p> <p>7 doesn't come in.</p> <p>8 THE COURT: How do I get around the following. How</p> <p>9 do you get around it. The Appellate Division First</p> <p>10 Department ruled unanimously in the Heckstall case that case</p> <p>11 reports are at least in that matter inadmissible. Judge</p> <p>12 Jaffe cited that case in Juni. Juni also involved Dr.</p> <p>13 Moline. The Court of Appeals agreed with the exclusions.</p> <p>14 So that's the --</p> <p>15 MS. SAMADI: The Heckstall case merely stands for</p> <p>16 the proposition that reliance solely on unverified listings</p> <p>17 and reporting of adverse reactions is unacceptable for</p> <p>18 causation. That is not what we have here. We have more</p> <p>19 than the mere reliance on case reports. We have</p> <p>20 epidemiology. We have her -- her medical testimony and</p> <p>21 reliance on airborne asbestos exposure from talcum powders.</p> <p>22 This is not a case -- case where all the case studies is all</p> <p>23 we have got.</p> <p>24 THE COURT: But here's it's the second to last</p> <p>25 paragraph, the last sentence, "Courts have recognized that</p>	

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<p>1 such observational studies or case reports are not generally</p> <p>2 accepted in the scientific community on questions of</p> <p>3 causation" citing Polland.</p> <p>4 MS. SAMADI: Well I think you have to look at that</p> <p>5 case -- A few points. I think you have to look at that case</p> <p>6 in context. That is again just talking about when all they</p> <p>7 have is case reports and adverse expert or adverse events</p> <p>8 reports. But more importantly that is -- that is not</p> <p>9 applicable to a mesothelioma case. Mesothelioma is a very</p> <p>10 rare disease. I would point the Court to, and I can get a</p> <p>11 copy if you want, the reference manual and scientific</p> <p>12 evidence, third edition, 2000 states that physicians have</p> <p>13 access to case reports in medical literature when</p> <p>14 considering causation for rare diseases. And they</p> <p>15 specifically reference asbestos as an example of when that</p> <p>16 should be used or can be used. So, I think in a case here,</p> <p>17 where we have what did she say 13 in a million, then, you</p> <p>18 know, it's -- it's more reliable to rely on case reports.</p> <p>19 And often for rare cases a study with a specific product is</p> <p>20 impossible. That's particularly true when so many of the</p> <p>21 users of the product have no idea that asbestos is in the</p> <p>22 product.</p> <p>23 THE COURT: How do you square your thinking then</p> <p>24 with Juni?</p> <p>25 MS. SAMADI: Two points, your Honor. Unlike Juni</p>		<p>1 MS. SAMADI: Your Honor, I would like to point out</p> <p>2 that unlike Juni here, we have testimony that there can be</p> <p>3 millions and millions of fibers per gram in a tainted baby</p> <p>4 powder. Unlike Juni, this is a product we have testimony</p> <p>5 about, that is a powder that is in the breathing zone and</p> <p>6 easily breathed by. And nothing is holding it together.</p> <p>7 There is nothing encapsulating it in any way. So, that is</p> <p>8 another distinction with Juni.</p> <p>9 Your Honor, she relies on evidence in all form.</p> <p>10 There has never been -- There is never going to be as</p> <p>11 careful a study and as much evidence of a case report as</p> <p>12 those that show up in litigation because everything is</p> <p>13 inquired about. You have direct testimony. You have all</p> <p>14 kinds of things. So, she relies on evidence in all forms.</p> <p>15 THE COURT: Do we have a copy of her report? Of</p> <p>16 her case studies where she typed it out? Something she just</p> <p>17 recalls? I understand that it's not published, but what is</p> <p>18 it -- what does her case study report look like? Do you</p> <p>19 have a copy?</p> <p>20 MS. SAMADI: Well, I think what the Court is</p> <p>21 calling her case studies is really her personal knowledge</p> <p>22 and her personal experience that she has learned over the</p> <p>23 years. So she's certainly able to answer any questions.</p> <p>24 I'm not aware of a certain document.</p> <p>25 THE COURT: There is nothing typed up?</p>	
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<p>1 this is not a case where there is allegations of the</p> <p>2 asbestos was somehow modified. Second -- By a heating</p> <p>3 process. Second, we in this case do have evidence of the</p> <p>4 amount of exposure through Dr. Longo and through Dr. Moline</p> <p>5 I believe and through Dr. Webber. So that did not exist in</p> <p>6 Juni. And that exists here.</p> <p>7 THE COURT: What's the causal theory of</p> <p>8 mesothelioma in Dr. Moline's case studies, is it more than</p> <p>9 simply well it had to be the talc because people got</p> <p>10 mesothelioma?</p> <p>11 MS. SAMADI: No, your Honor. She relies on much</p> <p>12 more than that. She relies on published literature and</p> <p>13 government documents that say the amount of exposure that</p> <p>14 our client had is sufficient to cause mesothelioma. And</p> <p>15 substantially similar cases that she has seen that inform</p> <p>16 her opinion on causation. So, it's much more than these</p> <p>17 adverse event reports or these case studies. And here I</p> <p>18 would like to point out, your Honor --</p> <p>19 MR. BLOCK: Your Honor.</p> <p>20 MS. SAMADI: Your Honor, I would like to point out</p> <p>21 unlike Juni this is a product that --</p> <p>22 THE COURT: Somebody said "your Honor".</p> <p>23 MR. BLOCK: I didn't know if you were prepared for</p> <p>24 Ms. Samadi to continue.</p> <p>25 THE COURT: Yes, I was.</p>		<p>1 MS. SAMADI: Not that --</p> <p>2 THE COURT: Her case studies, it's not written?</p> <p>3 It's not typed?</p> <p>4 MS. SAMADI: It's her experience. It's her</p> <p>5 personal knowledge of she's seen patients is my</p> <p>6 understanding in substantially similar conditions.</p> <p>7 THE COURT: So, you're -- you're asking that she</p> <p>8 talk about her other cases?</p> <p>9 MS. SAMADI: When they are substantially similar</p> <p>10 and --</p> <p>11 THE COURT: And there is nothing typed up?</p> <p>12 MS. SAMADI: I'm unaware of anything typed out.</p> <p>13 Again, it's based on her personal knowledge of substantially</p> <p>14 similar exposures. She's gained in her medical field and</p> <p>15 her medical practice.</p> <p>16 Your Honor, we would like to mark the adverse event</p> <p>17 reports. We have them in a binder here. They are all</p> <p>18 tabbed, if we could, for the record.</p> <p>19 THE COURT: She didn't write out her observational</p> <p>20 study or case report or anything like that? It's just</p> <p>21 something that she knows about?</p> <p>22 MS. SAMADI: I mean, in other cases she has. In</p> <p>23 some of the cases she has written reports. She has been</p> <p>24 deposed on those cases, but it is primarily based on her</p> <p>25 personal knowledge as a medical expert who has seen these</p>	

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<p>1 patients. So, is there a single document where she's</p> <p>2 written all of them up? I don't believe that exists. But</p> <p>3 there are reports and deposition testimony concerning some</p> <p>4 of these that she's seen.</p> <p>5 THE COURT: I thought that this was --</p> <p>6 MS. SAMADI: I mean, your Honor, it's essentially</p> <p>7 no different than what she testified about how she had seen</p> <p>8 somebody who the spouse got mesothelioma when the insulator</p> <p>9 did not. This is based on her years of expertise and her</p> <p>10 years of personal knowledge that she has seen with her --</p> <p>11 her eyes, and she's certainly able to testify about that.</p> <p>12 THE COURT: That's not what I understood a case</p> <p>13 report to be. If she's talking about things which she has</p> <p>14 personal knowledge, that's very different from accumulating</p> <p>15 something in a report about the variety of cases.</p> <p>16 MS. SAMADI: I think a lot of the case report --</p> <p>17 THE COURT: So I -- I --</p> <p>18 MS. SAMADI: I think a lot --</p> <p>19 THE COURT: Why did I stay up until midnight</p> <p>20 studying these last night.</p> <p>21 MS. SAMADI: Your Honor, I think a lot of the case</p> <p>22 report, case law goes to the adverse event reports because</p> <p>23 those can be considered.</p> <p>24 THE COURT: Okay. I think, of course, I want to</p> <p>25 hear from Mr. Kurland, but what about the idea of talking to</p>		<p>1 their common sense. That people don't get mesothelioma from</p> <p>2 using baby powder.</p> <p>3 THE COURT: Okay.</p> <p>4 MR. BLOCK: So --</p> <p>5 THE COURT: I heard that argument.</p> <p>6 MR. BLOCK: -- I would like these marked as a court</p> <p>7 exhibit, because I think they need to be part of the record,</p> <p>8 because they show the great detail contained in the event</p> <p>9 reports. We would ask that this be marked as Exhibit 350</p> <p>10 for identification, the binders be marked as 350 -- Let me</p> <p>11 just identify it for the record. So, event reports one</p> <p>12 through 25, including the chart, would be 350. Next binder</p> <p>13 containing 26 to 50 would be 350-A. The next binder</p> <p>14 containing event reports 51 to 75 would be 350-C. Event</p> <p>15 reports 76 through 100, 350-D. And event reports 101</p> <p>16 through 117 would be 350-E. And I know passed up to your</p> <p>17 Honor a few of the event reports yesterday, but these are in</p> <p>18 great detail. They are doing a medical review. They are</p> <p>19 talking about the possibility of causation being</p> <p>20 established. They talk about the details of the exposure.</p> <p>21 And although it's been asserted these are only cases from</p> <p>22 litigation, that has not necessarily been established as</p> <p>23 true. And I don't think it matters, your Honor.</p> <p>24 (Continue on the next page.)</p> <p>25</p>	
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<p>1 Dr. Moline outside the presence of the jury to find out what</p> <p>2 it is precisely she's referring to with regard to the case</p> <p>3 reports.</p> <p>4 MR. BLOCK: Your Honor, as the lawyer putting Dr.</p> <p>5 Moline on the stand, I want to make one statement, which is</p> <p>6 that we have in binders Johnson & Johnson adverse events</p> <p>7 reports, 117 of them. Their tabbed up. They are written</p> <p>8 out. They contain greatly detailed information about each</p> <p>9 and every event report showing Johnson & Johnson's knowledge</p> <p>10 of all the details of these event reports.</p> <p>11 THE COURT: Then it's admissible maybe for notice.</p> <p>12 MR. BLOCK: I want to make the statement.</p> <p>13 THE COURT: And I'm not saying for sure.</p> <p>14 MR. BLOCK: I want to make a statement. Maybe we</p> <p>15 could cut it short. If I'm permitted to ask Dr. Moline if</p> <p>16 she's aware and she's looked at the event reports that</p> <p>17 Johnson & Johnson has collected and ask her about the</p> <p>18 significance of those event reports that are written out,</p> <p>19 that have the details in them that your Honor was asking</p> <p>20 about, then I would not ask Dr. Moline about, you know,</p> <p>21 whether she has also seen patients, you know, who have</p> <p>22 developed mesothelioma after exposure to Johnson Baby Powder</p> <p>23 and other talcum products. I think precluding both, your</p> <p>24 Honor, is -- is unfair and not correct under the law,</p> <p>25 particularly when Johnson & Johnson told this jury to use</p>		<p>1 MR. BLOCK: So we have -- we could mark these</p> <p>2 later, but we have these here, if your Honor is interested</p> <p>3 in reviewing them.</p> <p>4 THE COURT: Show me.</p> <p>5 MR. BLOCK: Okay. Thank you.</p> <p>6 MR. KURLAND: We object to these even being marked,</p> <p>7 but I just wanted to note that.</p> <p>8 MR. BLOCK: Well, I would like them to be part of</p> <p>9 the record. So this is 350, 350A, 350B. Your Honor, can I</p> <p>10 put a sticker on 350, the book you have.</p> <p>11 So I believe there's four notebooks, or five</p> <p>12 notebooks.</p> <p>13 MR. HARTLEY: Five.</p> <p>14 MR. BLOCK: And they are marked 350, 350A, 350B,</p> <p>15 350C and 350D. And that includes the event reports one</p> <p>16 through 117. And there's a chart on the cover page of the</p> <p>17 notebooks.</p> <p>18 THE COURT: So tell me again -- I know that I just</p> <p>19 asked that question -- but why can't I just admit complaints</p> <p>20 from another action into evidence in this case? What would</p> <p>21 be the difference?</p> <p>22 MR. BLOCK: Because a claim in another action, I</p> <p>23 think, is seen as an allegation. And Johnson & Johnson --</p> <p>24 THE COURT: Isn't that what these are?</p> <p>25 MR. BLOCK: No, no. If you look -- if you read the</p>	

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<p>1 adverse event reports, it is a collection of information</p> <p>2 that the company has collected. That document confirmed</p> <p>3 cases of mesothelioma. And you'll see in the event reports</p> <p>4 it says, "Is it a confirmed case of mesothelioma? Yes.</p> <p>5 Yes.</p> <p>6 So we have the confirmed case of mesothelioma.</p> <p>7 Johnson & Johnson admits that in the event report. And then</p> <p>8 they summarize and identify the exposures.</p> <p>9 That's no different, your Honor, than, you know,</p> <p>10 so, what's Mr. Brock's evidence for telling a jury that</p> <p>11 there's no evidence of an epidemic of mesothelioma in</p> <p>12 Johnson's baby powder users?</p> <p>13 What is Mr. Brock's evidence for telling the jury</p> <p>14 that people don't get mesothelioma from Johnson & Johnson</p> <p>15 baby powder? It's been around for a hundred years. So it</p> <p>16 is relevant, your Honor, that this is not -- that this is</p> <p>17 not -- I mean, are we going to engage in a fiction that this</p> <p>18 is the first person whose ever got mesothelioma, whose only</p> <p>19 exposure was Johnson's baby powder, or is this going to be</p> <p>20 put out there for the jury, because we have these event</p> <p>21 reports, and let them argue the weight of the evidence.</p> <p>22 If they want to say, gee, this many million people</p> <p>23 used Johnson's baby powder, so this isn't a significant</p> <p>24 number, they could do that. They could have their corporate</p> <p>25 witness come in and talk about the process of checking the</p>		<p>1 MR. BLOCK: I'm looking at tab 102, event report in</p> <p>2 June 2015. The consumer had recurrent ascites. They are</p> <p>3 going through medical records. They are talking about CT</p> <p>4 scans. They are talking about the staining for the</p> <p>5 mesothelioma. They are talking about the radiology. They</p> <p>6 are talking about the medical details of the tumor. There's</p> <p>7 a summary of all the medicals.</p> <p>8 I mean, I'm looking at 102. They are talking about</p> <p>9 family history, social history.</p> <p>10 THE COURT: And that goes beyond what's in the</p> <p>11 complaint?</p> <p>12 MR. BLOCK: Yeah. They are reviewing the medical</p> <p>13 records. I mean, um:</p> <p>14 "QUESTION: Did the event associated with the use</p> <p>15 of this product cause inpatient hospitalization?"</p> <p>16 "Yes." Result. They list it as "serious event."</p> <p>17 Here, causality. 102, your Honor, tab 102. I</p> <p>18 could put it on the Elmo.</p> <p>19 MS. PAGONIS: Tell us the page. We don't have it.</p> <p>20 MR. BLOCK: Sure. The page -- actually, the page</p> <p>21 is produced by Johnson & Johnson. JNJALC --</p> <p>22 JNJALC000125935. ICH, modified. Causality, possible. So</p> <p>23 they are listing causality as possible. And I think there</p> <p>24 is other references to that. They are listing it as a</p> <p>25 serious event just to tell you, you know, patient case</p>	
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<p>1 event reports, talking about why they collect them, talking</p> <p>2 about who the medical person is who is reviewing them,</p> <p>3 because there is a medical review. You could just see on</p> <p>4 the face of the event reports, they are talking about a</p> <p>5 medical review.</p> <p>6 I mean, if you just read one or two of the event</p> <p>7 reports, you could see what they are doing. They are not</p> <p>8 just, you know, saying here's what someone claims. They are</p> <p>9 looking to see if it's a confirmed diagnosis of</p> <p>10 mesothelioma. And they are assessing causality. And in</p> <p>11 court they say it's impossible, your Honor. Outside of</p> <p>12 court in the event reports, they say this is possible.</p> <p>13 MR. KURLAND: Can you point to the portion of the</p> <p>14 event report where they are assessing causality or saying</p> <p>15 this is possible.</p> <p>16 MR. BLOCK: Yes. Yes, I can.</p> <p>17 THE COURT: Saying something is possible is</p> <p>18 different from an admission, but let's hear it.</p> <p>19 Let's have a clear answer to this question: Did</p> <p>20 Johnson & Johnson merely take complaints and analyze them or</p> <p>21 discuss them, or did they do some additional work?</p> <p>22 MR. BLOCK: There is medical record reviews. I</p> <p>23 mean, here's one. I'm just looking at tab 102.</p> <p>24 MR. HARTLEY: Your Honor, you don't have it because</p> <p>25 Mr. Block had to borrow that to answer your questions.</p>		<p>1 summary. Someone is doing a patient case summary, and it</p> <p>2 includes medical, whether it's Shower to Shower or Johnson's</p> <p>3 baby powder, the staining.</p> <p>4 These aren't things alleged in the complaint, your</p> <p>5 Honor. That it stained positive for WT 1, that it was a</p> <p>6 diagnosis of mesothelioma.</p> <p>7 And then, as an example, you could see -- look at</p> <p>8 all the medical review, your Honor. All the details of the</p> <p>9 patient. "On April 29th, 2014, the consumer", the consumer,</p> <p>10 your Honor. They are customers who use the product.</p> <p>11 "Underwent CT, abdomen and pelvis with contrast which</p> <p>12 revealed stable size of large mass in the pelvis." The</p> <p>13 consumer, your Honor.</p> <p>14 They say, oh, this is just plaintiffs. They are</p> <p>15 customers. "The consumer underwent biopsy of cervix mass</p> <p>16 which revealed..." and then it's a big summary.</p> <p>17 So, your Honor, they have made the decision to</p> <p>18 collect the information, to have a medical review of the</p> <p>19 information. They've assessed causality as possible. In</p> <p>20 court they say it's impossible. In court they tell jurors</p> <p>21 that this is the only person. Use your common sense, if</p> <p>22 this really caused mesothelioma, you and your family, and</p> <p>23 all the people who use this would be dropping dead.</p> <p>24 In the meantime, we have -- this is a 37-page event</p> <p>25 report, your Honor. Still on tab 102. "An unspecified CT</p>	

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<p>1 scan showed stable disease." They are keeping track of the</p> <p>2 course of disease for each and every person.</p> <p>3 I mean, look at this, your Honor. They have a</p> <p>4 coding system for it. Look at this: "Asbestos exposure</p> <p>5 inhalation or ingested asbestos dust and fibers."</p> <p>6 I'm in tab 103. On all of them, your Honor, that</p> <p>7 I've seen, possible. Causality, possible. So, they are</p> <p>8 having medical people -- this is outside of court -- and the</p> <p>9 conclusion that their medical people have come to is that</p> <p>10 all these people are getting mesothelioma who used our</p> <p>11 product. "Our consumers." "Our customers." And they have</p> <p>12 -- and their assessment is that causation is possible.</p> <p>13 They are listing this as a medical adverse event.</p> <p>14 It's hard to get this, but 103, it says -- and no one knows</p> <p>15 more about these events than Johnson & Johnson. I mean,</p> <p>16 they are able to come into court having reviewed all these</p> <p>17 medical records in all these cases, having access to the</p> <p>18 information in these cases, and explain anything they want</p> <p>19 that goes to the weight of the evidence. We, on the other</p> <p>20 hand, only have, you know, what they put up in these event</p> <p>21 reports.</p> <p>22 So 104, same thing. Causality, possible. So, I</p> <p>23 just went to three, 102, 103, 104. We could go through all</p> <p>24 117, but I think you get the picture, your Honor. This is</p> <p>25 not a memo inside Johnson & Johnson where they said, oh,</p>		<p>1 and they want to -- the jury to think that Ms. Olson is the</p> <p>2 first person who -- the first Johnson baby powder user whose</p> <p>3 ever gotten mesothelioma, and that's not true. And if they</p> <p>4 didn't think these event reports were important --</p> <p>5 THE COURT: How are you going use the event</p> <p>6 reports?</p> <p>7 MR. BLOCK: Well, Dr. Moline -- I just planned on</p> <p>8 asking Dr. Moline a few questions. You know, um, you know,</p> <p>9 is looking at event reports that are kept about a product in</p> <p>10 looking at a rare disease like mesothelioma something, you</p> <p>11 know, that you view as significant?</p> <p>12 Yes.</p> <p>13 Why is that?</p> <p>14 Because mesothelioma is a rare disease, so if there</p> <p>15 is a collection of a large number of event reports, it is</p> <p>16 significant from an occupational and environmental medicine</p> <p>17 standpoint.</p> <p>18 And have you reviewed event reports that Johnson &</p> <p>19 Johnson has regarding the disease, mesothelioma?</p> <p>20 And I think she'll say, yes.</p> <p>21 And in those event reports, does it indicate</p> <p>22 whether the person used Johnson's baby powder or Shower to</p> <p>23 Shower within the known latency period for developing the</p> <p>24 disease, mesothelioma?</p> <p>25 Yes, it does.</p>	
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<p>1 here's 117 cases that we've been sued in. It's not even</p> <p>2 clear that in all these cases the information came from a</p> <p>3 lawsuit. But even if it did, your Honor, they've gone</p> <p>4 beyond cataloging being sued. And they are having a medical</p> <p>5 person go through all the medical records in detail, and</p> <p>6 they are assessing causality as possible.</p> <p>7 And they are going through sort of a decision</p> <p>8 treatise in evaluating causality outside of court. That is</p> <p>9 different. I don't see in these event reports their in</p> <p>10 court arguments that miners and millers aren't getting</p> <p>11 mesothelioma, and therefore, these are rejected as not</p> <p>12 causal. And it would definitely be admissible for notice,</p> <p>13 your Honor. And certainly -- I mean, why would a medical</p> <p>14 doctor not ordinarily rely upon event reports that are</p> <p>15 contained in the file of the company?</p> <p>16 THE COURT: Except that the notice issue, and it's</p> <p>17 true, although that's always a possibility, but this was</p> <p>18 after Ms. Olson stopped using the product.</p> <p>19 MR. KURLAND: Correct, your Honor.</p> <p>20 MR. BLOCK: I would just say, these are -- I would</p> <p>21 say -- what I should've said is that it rebuts their</p> <p>22 causation defense and it rebuts their claim that other</p> <p>23 people are not getting sick. I mean, they did tell the jury</p> <p>24 that, your Honor. And -- and -- well, their position is</p> <p>25 that if mesothelioma can never be caused by their product,</p>		<p>1 And does it indicate the years in which these event</p> <p>2 reports were collected for? And it's primarily 2016 to</p> <p>3 2018, and it's about 40 cases per year from 2016 to 2019.</p> <p>4 And what is the significance of that from an</p> <p>5 occupational and environmental medicine standpoint?</p> <p>6 And I believe Dr. Moline will say that it's</p> <p>7 significant because mesothelioma is a very rare disease, and</p> <p>8 that number, 40 per year, is about ten percent, or</p> <p>9 approaching ten percent in terms of the women who are</p> <p>10 diagnosed with mesothelioma each year in the United States.</p> <p>11 So just as Dr. Moline testified that when she</p> <p>12 identified cases of dentists that -- that that was</p> <p>13 significant, and she reported on that in the literature that</p> <p>14 the dentists had developed mesothelioma -- and by the way,</p> <p>15 that was -- those were disputed situations. The dental</p> <p>16 company said that the mesothelioma wasn't caused by the</p> <p>17 dental products, but she identified those sources of</p> <p>18 exposure. The people developed mesothelioma, and that was</p> <p>19 published in the American Journal of Industrial Medicine as</p> <p>20 an important case series that showed -- or that supported</p> <p>21 causation.</p> <p>22 So -- and if they want to claim that they have some</p> <p>23 legal duty to collect these, I don't believe they do. And</p> <p>24 there's been no evidence that they do. But why are they</p> <p>25 doing this, your Honor?</p>	

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<p>1 They are having a medical person assess the facts</p> <p>2 of these cases. All the medical records assess causality</p> <p>3 and they are collecting it because this is a real issue.</p> <p>4 This is a real issue that is affecting their consumers. And</p> <p>5 they are currently looking at it out of court. And we have</p> <p>6 the documents, and they've produced it to us, but, your</p> <p>7 Honor, if I'm able to ask her about the adverse event</p> <p>8 reports, I don't need to ask her about her personal</p> <p>9 experience in reviewing other cases where people got</p> <p>10 mesothelioma where their only exposure was Johnson's baby</p> <p>11 powder or where their only exposure was talcum powder</p> <p>12 products.</p> <p>13 So I thought it was important, one way or the</p> <p>14 other, to bring out that this doctor is aware of other cases</p> <p>15 and that that is significant. And either through her</p> <p>16 personal experience I should be able to bring that out, or</p> <p>17 through her knowledge of the adverse event reports.</p> <p>18 Thank you.</p> <p>19 MR. KURLAND: Your Honor, the questions you've</p> <p>20 asked this morning reveal the fundamental problem with using</p> <p>21 this type of evidence. And I want the Court to keep in mind</p> <p>22 here that the question we are looking at is can these</p> <p>23 fragments of evidence be used by a causation expert to</p> <p>24 establish specific causation? And all we know about each</p> <p>25 piece of evidence here is that it reports use of Johnson's</p>		<p>1 say, aha, Johnson's baby powder, mesothelioma, must have</p> <p>2 caused -- you know, the baby powder must have caused the</p> <p>3 mesothelioma, because your only basis for saying that is</p> <p>4 there was asbestos in it, but she doesn't really know how</p> <p>5 much asbestos was in it. And she doesn't know if there was</p> <p>6 any asbestos in any particular container that Ms. Olson</p> <p>7 used. And for her to use these to try to bolster the leap</p> <p>8 she's making is improper, scientifically. It's exactly what</p> <p>9 the Court said in the Axel case, which is directly</p> <p>10 applicable here. The fact that mesothelioma is rare does</p> <p>11 not change the analysis that isolated case reports that --</p> <p>12 THE COURT: It might. And that's what's been</p> <p>13 troubling me. It might, in the sense of the -- please</p> <p>14 address this, if you would, in that you can have really good</p> <p>15 studies when it comes to defective machinery or when you</p> <p>16 have a major drug protocol, but when something is assertedly</p> <p>17 rare, how do you show a causality?</p> <p>18 Could not different standards apply in asbestos</p> <p>19 cases? And doubly so in asbestos talc cases. Are not</p> <p>20 asbestos cases treated differently from other cases? Of</p> <p>21 course they are. We have a CMO that contradicts the CPLR in</p> <p>22 material ways. There are different rules in asbestos cases.</p> <p>23 Why wouldn't this be one of them, given the rarity, given</p> <p>24 the circumstances, given the differences in how there can be</p> <p>25 experimentation that would show causality in more than the</p>	
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<p>1 baby powder and mesothelioma. It says nothing about a</p> <p>2 causal relationship between the two things.</p> <p>3 And unlike the cases where Dr. Moline has -- has</p> <p>4 relied on small numbers of case reports to reach opinions on</p> <p>5 causation, in each one of those cases, she testified about</p> <p>6 four. We are dealing with a particular product which</p> <p>7 asbestos was an intentional ingredient at a known level. So</p> <p>8 the dental tape, small number of people. Dealing with known</p> <p>9 quantities of asbestos.</p> <p>10 Here, the only evidence about asbestos</p> <p>11 contamination in Johnson's baby powder has come in through</p> <p>12 Dr. Webber and Dr. Longo and various historical documents</p> <p>13 mentioning potential tremolite contamination, which we</p> <p>14 dispute is even asbestos, but for purposes of this</p> <p>15 conversation that doesn't really matter.</p> <p>16 You have wildly varying potential asbestos</p> <p>17 contamination in these containers. Dr. Longo says he found</p> <p>18 asbestos contamination in some 60 percent of the containers.</p> <p>19 That means there's an entire universe of containers,</p> <p>20 statistically significant universe of containers, that</p> <p>21 Dr. Longo admits don't contain asbestos. There is a</p> <p>22 significant amount of talc in the mines that does not</p> <p>23 contain asbestos. The evidence that has already been educed</p> <p>24 from the experts shows that. So we are not dealing with any</p> <p>25 known amount of asbestos contamination for Dr. Moline to</p>		<p>1 association.</p> <p>2 MR. KURLAND: Your Honor, the rules of court do not</p> <p>3 change the rules of science, and that's why the court needs</p> <p>4 to exercise a gatekeeping function. We are not saying that</p> <p>5 Dr. Moline can't testify at all. In fact, she's already</p> <p>6 testified that she's applying the same level of intellectual</p> <p>7 rigor to this case, the same that she would apply in her</p> <p>8 ordinary medical practice.</p> <p>9 What we are saying, these specific pieces of</p> <p>10 isolated case reports and adverse event reports do not</p> <p>11 inform a causation opinion. Dr. Moline can say that based</p> <p>12 on my training and experience and medical profession, I am</p> <p>13 aware, and believe, and know that incredibly small amounts</p> <p>14 of asbestos can cause mesothelioma. She can say that.</p> <p>15 And plaintiffs other experts can say we believe to</p> <p>16 a reasonable degree of certainty within our particular</p> <p>17 fields that it's possible that these containers were</p> <p>18 contaminated with very small amounts of asbestos.</p> <p>19 And then plaintiffs can argue to the jury that we</p> <p>20 have presented evidence that there can be very small amounts</p> <p>21 of asbestos. We have presented evidence that very small</p> <p>22 amounts of asbestos can cause mesothelioma, and therefore,</p> <p>23 that's what's happened to Ms. Olson. They can argue that</p> <p>24 with evidence that we are not contesting. It is using these</p> <p>25 case reports.</p>	

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<p>1 It is using these adverse event reports to say that</p> <p>2 there are lots and lots of examples where Johnson's baby</p> <p>3 powder has caused mesothelioma, that's our problem, because</p> <p>4 none of these establish, in any way, that Johnson's baby</p> <p>5 powder caused mesothelioma.</p> <p>6 And I asked Mr. Block, where in these adverse event</p> <p>7 reports is there an assessment of causation, and the only</p> <p>8 thing he points to is this code that says that causation is</p> <p>9 possible. And "possible" is -- is a question that we are</p> <p>10 asking this jury to address. "Possible" is a question that</p> <p>11 is being addressed in all of these cases. "Possible" is why</p> <p>12 Johnson & Johnson is defending these cases.</p> <p>13 And we are not disputing that Ms. Olson has</p> <p>14 mesothelioma. In none of these case reports is Johnson &</p> <p>15 Johnson disputing that the people have mesothelioma; that</p> <p>16 there's a confirmed mesothelioma diagnosis does not touch on</p> <p>17 the issue of a causal relationship.</p> <p>18 And saying that just because a person used Johnson</p> <p>19 baby powder and got mesothelioma is enough to have evidence</p> <p>20 of causation, um, is -- is absolutely contrary to the law</p> <p>21 and contrary to science.</p> <p>22 And for what it's worth, I'll point out that the</p> <p>23 ICH code assessing causality in all of these records is a</p> <p>24 code that comes from the FDA, it's in their March 1995</p> <p>25 guidance for industry document on adverse event reporting,</p>		<p>1 a mini trial on each one of these case reports about what</p> <p>2 they say. It's going to look exactly like the larger trial</p> <p>3 we are having here for Ms. Olson. Each one of these cases</p> <p>4 is asking the same question, did Johnson's baby powder cause</p> <p>5 mesothelioma? None of those case reports answer that</p> <p>6 question. If they answered that question, if they were</p> <p>7 probative of that question, then perhaps they would be</p> <p>8 reliable, but they are not. At best, they show a temporal</p> <p>9 relationship between two isolated facts.</p> <p>10 And to the extent that the Court is considering</p> <p>11 admitting these for notice purposes, you are absolutely</p> <p>12 right to have observed that virtually all of these, if not</p> <p>13 all of these, were collected by the company after the period</p> <p>14 which Ms. Olson testified she stopped using any of the</p> <p>15 powder products because she was concerned of the risks. So</p> <p>16 it is not admissible as notice for that.</p> <p>17 Even if it were admissible as notice, it certainly</p> <p>18 wouldn't be able to be used to form the basis of an expert</p> <p>19 opinion.</p> <p>20 And again, what is happening here is plaintiffs</p> <p>21 recognize that there's an inferential leap that they are</p> <p>22 asking the jury to make. They have experts that say, we</p> <p>23 believe there is a small amount of asbestos. They have come</p> <p>24 up -- Dr. Longo has come up with a calculation about what he</p> <p>25 believes the amount of asbestos would be released from a</p>	
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<p>1 and the ICH code for causality -- FDA, and I could point you</p> <p>2 to the regulation, specifically instructs the company to</p> <p>3 report what the complainant is saying. And every one of</p> <p>4 these adverse event reports that Mr. Block put on the screen</p> <p>5 says, comes in through an attorney. All of those medical</p> <p>6 statements are excerpts from the medical records that the</p> <p>7 company collects.</p> <p>8 Now, do they have a specific regulatory obligation</p> <p>9 from FDA to collect this medical information in the context</p> <p>10 of a cosmetic product? I don't know the answer to that, but</p> <p>11 it doesn't really matter. They do collect it. They collect</p> <p>12 it for all of their products. Every single thing they sell,</p> <p>13 they collect the information the same way. And it does not</p> <p>14 establish causation. It shows that the company is</p> <p>15 responsibly keeping track of this information.</p> <p>16 And Mr. Block keeps saying, they have independent</p> <p>17 medical experts, independent medical reviewers reviewing</p> <p>18 these documents. First of all, I personally know that not</p> <p>19 to be true.</p> <p>20 Second of all, I don't think Mr. Block can adduce</p> <p>21 any evidence that that is true, because it's just repeating</p> <p>22 what's in the medical records that the plaintiffs provide in</p> <p>23 discovery.</p> <p>24 And I think more importantly, if this type of</p> <p>25 evidence comes in, we are essentially going to have to have</p>		<p>1 container of Johnson's baby powder. They point to the</p> <p>2 Gordon study about Cashmere Bouquet, which comes up with a</p> <p>3 calculation of fibers released by use of a product which</p> <p>4 they say contained the same type of Italian talc that was in</p> <p>5 Johnson's baby powder. They have these pieces of evidence</p> <p>6 to suggest that a certain amount of asbestos may have been</p> <p>7 released while Ms. Olson used Johnson's baby powder. Okay.</p> <p>8 That evidence is in.</p> <p>9 Then they have Dr. Moline saying that the certain</p> <p>10 amount of asbestos that the other experts believe is in the</p> <p>11 Johnson's baby powder, in her medical opinion to a</p> <p>12 reasonable degree of medical certainty, is enough to cause</p> <p>13 mesothelioma. That can come in. Fine.</p> <p>14 Now they are trying to backfill this inferential</p> <p>15 leap, which they are allowed to argue to the jury, and we</p> <p>16 are going to argue about it too, and that's fine. That's</p> <p>17 what this trial is about, but they are trying to backfill</p> <p>18 this inferential leap with the fact that other plaintiffs</p> <p>19 are filing lawsuits making the same claims. And that is not</p> <p>20 a scientifically, justifiable basis for an opinion.</p> <p>21 And -- and the distinctions with Juni are sort of</p> <p>22 in opposite. The comparisons to the other studies where</p> <p>23 they found small amounts of asbestos in particular products</p> <p>24 with a small number of people are sort of in opposite,</p> <p>25 because again, in that universe, we are dealing with known</p>	

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<p>1 asbestos-containing products, and we are not dealing with</p> <p>2 that here. So there is a gap. There is a gap. And that is</p> <p>3 not the defendant's fault that that gap exists.</p> <p>4 This is a difficult question to answer. If this</p> <p>5 was an easy question to answer, we wouldn't be having this</p> <p>6 trial right now. But to allow in all this other evidence,</p> <p>7 essentially that other plaintiffs who have a confirmed</p> <p>8 diagnosis of mesothelioma and have also used Johnson's baby</p> <p>9 powder, even if you don't call them other plaintiffs, call</p> <p>10 them consumers or customers, which is how the business rules</p> <p>11 recognize -- instruct the adverse event reports to refer to</p> <p>12 the person claiming an injury from having purchased a</p> <p>13 product. Even if you don't say they are other plaintiffs,</p> <p>14 it's still incredibly prejudicial to use this evidence that</p> <p>15 establishes nothing as a basis for a scientific opinion.</p> <p>16 And we think the case law is incredibly clear on that.</p> <p>17 And I'm happy to address a couple of the other</p> <p>18 points that were raised, but I don't think we need to take</p> <p>19 the time.</p> <p>20 If the Court has any other questions you would like</p> <p>21 me to address.</p> <p>22 MR. BLOCK: And if you do not have any other</p> <p>23 questions for Mr. Kurland, I just wanted to show you one bit</p> <p>24 of information from the event report that hasn't been</p> <p>25 raised, your Honor.</p>		<p>1 Ladies and gentlemen, these women who use powder, they get</p> <p>2 it spontaneously. But in their evaluation of the event</p> <p>3 reports, they evaluate whether something else could have</p> <p>4 caused the person's mesothelioma. And they answer the</p> <p>5 question yes or no.</p> <p>6 (Continued on the next page.)</p>
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<p>1 So looking at event report tab 103. All right.</p> <p>2 One of their arguments is how do we know for these people,</p> <p>3 these 117 event reports, whether there was some other</p> <p>4 exposure that could have cause their mesothelioma. Well,</p> <p>5 they evaluate that, too, your Honor.</p> <p>6 All right. They have a decision treatise, cosmetic</p> <p>7 products causality decision treatise. Is chronology</p> <p>8 incompatible. So the appropriate latency there. So</p> <p>9 chronology is not incompatible. But then look at this. Is</p> <p>10 another etiology.</p> <p>11 THE COURT: Where are you?</p> <p>12 MR. BLOCK: I'm in JNJALC125957, which is in tab</p> <p>13 102, which I'll pass back up to you with the flags. Tab</p> <p>14 103, "Is another etiology demonstrated medically" -- "Is</p> <p>15 another etiology demonstrated medically, validated and</p> <p>16 documented."</p> <p>17 "No."</p> <p>18 They reviewed these cases of people with</p> <p>19 mesothelioma with Johnson's baby powder, and one of the</p> <p>20 things they assess is, is another cause demonstrated</p> <p>21 medically, validated and documented. No.</p> <p>22 So, your Honor, in court they say oh, women who use</p> <p>23 talcum powder, they get mesothelioma spontaneously 60 to 90</p> <p>24 percent of the time. And the spontaneous mesothelioma is</p> <p>25 the cause. And they say it's really straightforward.</p>		<p>1 MR. BLOCK: And here is another epidemiology</p> <p>2 medically illustrated document, no. They say, your Honor,</p> <p>3 they review each case and they say whether causality -- how</p> <p>4 they assess causality. Causality was assessed as possible.</p> <p>5 They are making an assessment of causality. They're</p> <p>6 documenting whether there is any other possible cause, and</p> <p>7 they're listing yes or no, whether the person had any other</p> <p>8 exposure. So --</p> <p>9 THE COURT: Just a second.</p> <p>10 MR. BLOCK: So, I could pass that notebook up where</p> <p>11 I have those yellow flags that I was just reading from. So</p> <p>12 there is a lot of detail in there, and it's certainly not</p> <p>13 simply taking what people say happened and just kind of</p> <p>14 summarizing it. They are making an assessment. They are</p> <p>15 doing a detailed review. It's inconsistent with their in</p> <p>16 court position. These are business records of the company</p> <p>17 that they produced in this case. The only issue right now</p> <p>18 is whether doctor -- is whether I could lay a foundation</p> <p>19 with Dr. Moline that looking at these event reports has</p> <p>20 significance from an occupational-environmental medicine</p> <p>21 standpoint, given the rarity of mesothelioma. And I think</p> <p>22 that is the issue that needs to be decided. And we could</p> <p>23 deal with issues of admissibility in terms of admitting</p> <p>24 these in evidence or whether they could be used on cross</p> <p>25 examination with defense experts at a later time. But with</p>

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<p>1 Dr. Moline here, that's the issue that needs to be decided.</p> <p>2 Is this something that with appropriate foundation laid, an</p> <p>3 expert can refer to as something that they reasonably and</p> <p>4 ordinarily rely upon or would rely upon as part of the</p> <p>5 information that they consider to be important in looking at</p> <p>6 mesothelioma being caused by this product.</p> <p>7 Mr. Kurland is correct in that Dr. Moline has a</p> <p>8 host of other information that she's already talked about,</p> <p>9 and she will be able to give a causation opinion based upon</p> <p>10 all that other information, but we think this is proper.</p> <p>11 Our medical -- Dr. Moline is here, and we think it's proper</p> <p>12 for her to give some limited testimony based upon her</p> <p>13 awareness and review of these event reports.</p> <p>14 MR. KURLAND: Again, the decision in there is part</p> <p>15 of an FDA regulation, business rule. A function. There is</p> <p>16 no foundation for what Mr. Block just said. There is not</p> <p>17 going to be any foundation in this case, and there is not</p> <p>18 any foundation for what I'm saying. I just happen to know</p> <p>19 how the company keeps these records. That is an FDA</p> <p>20 decision where they look to the information that has come in</p> <p>21 through the course of discovery and break down the</p> <p>22 information. So, if the information provided through the</p> <p>23 course of discovery in litigation does not provide any other</p> <p>24 information, then they don't report any other information.</p> <p>25 But they never reach a causation conclusion. The best they</p>	<p>1 fine. That's why we're having a trial. But the Court has</p> <p>2 an obligation to prevent baseless, nonscientific information</p> <p>3 from coming out of the mouth of an expert to confuse the</p> <p>4 jury. Opinion testimony as a general principle is</p> <p>5 disfavored in New York courts. And, therefore it, is</p> <p>6 narrowly curtailed. Experts are allowed to opine within</p> <p>7 their expertise, but it needs to be based on reliable</p> <p>8 science. That's exactly what the First Department said in</p> <p>9 Heckstall. That's all we're asking here is that the Court</p> <p>10 apply the law as the First Department has described it.</p> <p>11 This is not a complicated question. These case reports,</p> <p>12 these adverse event reports are inadmissible to establish</p> <p>13 causation, and we believe they would also be inadmissible</p> <p>14 for notice, because they postdate all of the use of this</p> <p>15 particular plaintiff.</p> <p>16 These case reports are really no different than a</p> <p>17 complaint with a Bill of Particulars. It's a complaint plus</p> <p>18 medical records. That's what we have here. They are bare</p> <p>19 allegations. They are not evidence of causation.</p> <p>20 MR. BLOCK: Your Honor, Mr. Brock, this board was</p> <p>21 separate and apart from what he said to the jury. This</p> <p>22 board just talks about talc use generally and tries to track</p> <p>23 it with incidents of mesothelioma. We'll see if they</p> <p>24 develop a foundation through an expert where they can talk</p> <p>25 about that. But he flat out told the jury that because this</p>
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<p>1 come to is possible, and possible does not -- I mean,</p> <p>2 anything is possible. As I said yesterday, you know, if you</p> <p>3 have a person who has a color TV and also has diabetes, you</p> <p>4 can report those two things in a temporal relationship to</p> <p>5 one another, and it is possible that there is a</p> <p>6 relationship, but there is no scientific basis to assert one</p> <p>7 of those isolated pieces of information. That's essentially</p> <p>8 what the plaintiffs are attempting to do here. Dr. Moline</p> <p>9 cannot create a foundation for these documents. There is</p> <p>10 not going to be a witness that can create foundation. If we</p> <p>11 were going to create foundation for these documents, we</p> <p>12 would be having the same trial that we're having now through</p> <p>13 Mrs. Olson for every single one of these plaintiffs that are</p> <p>14 identified in these case reports in this courtroom. That is</p> <p>15 not something that we should be doing here.</p> <p>16 And I brought the chart just to be clear.</p> <p>17 Mr. Block's statements in opening were based on two things.</p> <p>18 The sale of cosmetic talc and the rate of diagnosis. That's</p> <p>19 what he was talking about. So, it is a red herring to say</p> <p>20 we have somehow opened the door to all of these other</p> <p>21 plaintiffs. We're not disputing there are people who used</p> <p>22 Johnson's Baby Powder that have mesothelioma and claim the</p> <p>23 two things are related. We are litigating these cases</p> <p>24 actively around the country, 'cause we don't think there is</p> <p>25 a causal relationship and the plaintiffs do, and that's</p>	<p>1 product has been around for a hundred years, use your common</p> <p>2 sense and that people are not getting mesothelioma from this</p> <p>3 disease. There is not an "epidemic" of people with</p> <p>4 mesothelioma from Johnson's Baby Powder. Mr. Kurland, I</p> <p>5 think, just said that we're not disputing that people who</p> <p>6 use Johnson's Baby Powder have gotten mesothelioma. Yes,</p> <p>7 they are. Yes, they are. They have fought and they have</p> <p>8 made application to the Court. They have said -- they have</p> <p>9 indicated to the Court that there should be no evidence of</p> <p>10 anyone else who has ever developed mesothelioma after using</p> <p>11 Johnson's Baby Powder, okay. And that was -- that was the</p> <p>12 purpose of their original application, to preclude Dr.</p> <p>13 Moline from talking about other cases that she's assessed.</p> <p>14 Because they want to create a fiction in this court that</p> <p>15 Donna Olson is the first customer of Johnson & Johnson who</p> <p>16 used baby powder and got mesothelioma when in reality</p> <p>17 they're collecting over a hundred cases, they're assessing</p> <p>18 causality and they are making a statement in each of those</p> <p>19 whether there is any other possible cause, yes or no. So,</p> <p>20 we have a lot of detailed information in those event</p> <p>21 reports.</p> <p>22 THE COURT: When did Ms. Olson stop using --</p> <p>23 MR. BLOCK: In 2015.</p> <p>24 MR. KURLAND: Just to be clear, your Honor, we have</p> <p>25 never said, nor will we say that there is not a person who</p>

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<p>1 has used Johnson Baby Powder and has gotten mesothelioma.</p> <p>2 What we're disputing in this case and all of these cases is</p> <p>3 whether or not the use of Johnson's Baby Powder in and of</p> <p>4 itself is a cause of mesothelioma. We are looking at</p> <p>5 specific causation. And there is a three prong test under</p> <p>6 Juni. There is a clear requirement that plaintiffs induce</p> <p>7 evidence of specific causation. They are using Dr. Moline</p> <p>8 to do that. There are certain things she's allowed to rely</p> <p>9 in forming that opinion. She needs to have a scientific</p> <p>10 expression of that causality. And these case reports and</p> <p>11 these adverse event reports are not a scientific expression</p> <p>12 of anything, which is why they are routinely excluded as a</p> <p>13 basis for a causation opinion. So, this idea that we're</p> <p>14 saying no one who has used Johnson's Baby Powder ever got</p> <p>15 mesothelioma is simply not a genuine statement of our</p> <p>16 position. We are saying that we don't believe Johnson's</p> <p>17 Baby Powder causes mesothelioma. And that's the question</p> <p>18 this jury is being asked to decide.</p> <p>19 THE COURT: Okay. I just by coincidence opened up,</p> <p>20 thank you, one of the binders. It's 103. Here the consumer</p> <p>21 stopped using Johnson's powder in approximately 2003.</p> <p>22 MR. KURLAND: Your Honor, I would ask what's the</p> <p>23 date of the case report, because that would be the relevant</p> <p>24 question for whether or not it would be admissible for</p> <p>25 notice purposes. When the company received notice, not when</p>		<p>1 event number 30000151575. It says date reported 2/19/2010.</p> <p>2 And 30000133514 says date reported 10/11/2012. Every other</p> <p>3 one postdates the plaintiff's use. But again --</p> <p>4 THE COURT: In all binders?</p> <p>5 MR. KURLAND: Yes. This is all. This list the</p> <p>6 plaintiffs prepared is all of them. The next one is</p> <p>7 1/4/2016 and then they go through 2/24/2017, and all the</p> <p>8 dates are in that period. Again, even if the Court were</p> <p>9 inclined to admit these for some sort of notice purpose,</p> <p>10 putting them in through Dr. Moline would be incredibly</p> <p>11 prejudicial, because it would imply to the jury with any</p> <p>12 kind of instruction that it's forming her causation opinion</p> <p>13 and these are improper to form a causation opinion. So, if</p> <p>14 the plaintiffs want to put these in through a Johnson &</p> <p>15 Johnson witness and say well isn't it true that you received</p> <p>16 this report in 2010, maybe that's one thing. It would be</p> <p>17 admissible for the fact the report was received, not notice</p> <p>18 of anything. But it's a completely different thing to allow</p> <p>19 Dr. Moline to talk about them.</p> <p>20 I'll just read from the one that was just referred</p> <p>21 to by Mr. Hartley, the notes where it reports what the</p> <p>22 company learned. It says "Consumer was hurt and injured in</p> <p>23 her health, strength and activity, sustaining serious and</p> <p>24 severe injuries to her person and body and to her lungs,</p> <p>25 respiratory and cardiovascular systems and permanent</p>	
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<p>1 the person said they stopped using the powder.</p> <p>2 THE COURT: Where does it say that?</p> <p>3 MR. KURLAND: I believe it's on the first page,</p> <p>4 your Honor. I don't have the one you're looking at in front</p> <p>5 of me. I believe there is an entered date on the top.</p> <p>6 THE COURT: Yes. This one doesn't have it.</p> <p>7 MR. KURLAND: Typically there is more information.</p> <p>8 THE COURT: I'm sorry. Oh, sure. It's right on</p> <p>9 the first page where they have the entry date.</p> <p>10 MR. HARTLEY: Your Honor, if you look --</p> <p>11 THE COURT: February 9th, 2017.</p> <p>12 MR. HARTLEY: I'm looking at -- I don't know the</p> <p>13 number in the binder, but it's event number 30000133514.</p> <p>14 And on the first page in the upper right-hand side column,</p> <p>15 the first line, it gives you a J & J awareness date. So,</p> <p>16 that would be helpful in terms of when they were aware.</p> <p>17 This particular one their awareness of it was February 19,</p> <p>18 2010. And there are going to be a number of others. We</p> <p>19 would argue that the cutoff date for notice is the date of</p> <p>20 diagnosis in this case.</p> <p>21 MR. KURLAND: Based on the charts that the</p> <p>22 plaintiffs prepared that they handed up yesterday, I believe</p> <p>23 it was marked, there are two adverse event reports that they</p> <p>24 are referring to that have a date prior to the plaintiff's</p> <p>25 statement when she discontinued using the product. It's</p>		<p>1 injuries and have caused and continue to cause great</p> <p>2 physical, mental and nervous pain and suffering and mental</p> <p>3 anguish, all of her general damage in a sum which has yet to</p> <p>4 be ascertained."</p> <p>5 Now, if that -- if a doctor talks like that, I</p> <p>6 would be shocked to see it. If a doctor says "damages in a</p> <p>7 sum yet to be ascertained", I would be shocked to see it.</p> <p>8 That sounds very much to me this is a cut and paste from a</p> <p>9 complaint, not a medical investigation of causation, which</p> <p>10 is what plaintiffs are purporting these are. These are</p> <p>11 litigation complaints.</p> <p>12 THE COURT: Let's take a ten minute break and I'll</p> <p>13 think about it.</p> <p>14 MR. KURLAND: Thank you, your Honor.</p> <p>15 (Whereupon a recess was taken.)</p> <p>16 THE COURT: Thanks counsel for their excellent</p> <p>17 argument on these difficult issues. The issue before the</p> <p>18 Court is whether the adverse event reports may be admitted</p> <p>19 and whether the case studies may be admitted.</p> <p>20 With respect to the case studies, plaintiffs have</p> <p>21 not shown that Dr. Moline has personal knowledge of other</p> <p>22 cases through treating patients who have mesothelioma.</p> <p>23 Plaintiffs do not provide written documents by which the</p> <p>24 Court can assess the probative value of information about</p> <p>25 the cases to which Dr. Moline would testify or would show</p>	

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<div>1 that these cases are similar in any way to the one here.</div> <div>2 Dr. Moline may not refer to those other cases in support of</div> <div>3 her opinion on causation.</div> <div>4 With respect to the adverse event reports, the</div> <div>5 Court similarly concludes that Dr. Moline may not refer to</div> <div>6 those reports as bases for her causation opinion. Court</div> <div>7 finds that defendants argued correctly that the report</div> <div>8 simply reflect the consumer statements, that the consumer</div> <div>9 used Johnson's talcum products, and the consumers' medical</div> <div>10 records showing that the consumer has mesothelioma and does</div> <div>11 not show any causal connection between the two, nor do these</div> <div>12 documents purport to rule out alternative or other causal</div> <div>13 explanations for the consumers' mesothelioma. So, applying</div> <div>14 the First Department's decision in Heckstall,</div> <div>15 H-E-C-K-S-T-A-L-L, testimony about these reports is</div> <div>16 inadmissible.</div> <div>17 MR. BLOCK: Can Dr. Moline know take the stand?</div> <div>18 THE COURT: Yes. Please.</div> <div>19 JACQUELINE MOLINE, Ph.D, after having been</div> <div>20 previously duly sworn, was examined and testified further as</div> <div>21 follows:</div> <div>22 THE WITNESS: I know you guys were talking a lot,</div> <div>23 and there was a lot of hot air probably, but it's freezing</div> <div>24 in here.</div> <div>25 MR. HARTLEY: May I close the window, your Honor.</div>	<div>1 A Yes.</div> <div>2 Q You testified yesterday that published studies</div> <div>3 demonstrate that exposure at a level of one fiber per cc year is</div> <div>4 sufficient to cause mesothelioma, is that right?</div> <div>5 A Yes.</div> <div>6 Q All right. So, let's do another number here. So, 0.1</div> <div>7 fiber per cc times one year, okay. And does that equal 0.1</div> <div>8 fiber per cc year?</div> <div>9 A Yes.</div> <div>10 Q And have published studies demonstrate that even</div> <div>11 exposure at the zero point fiber per cc level for one year is</div> <div>12 sufficient to cause mesothelioma?</div> <div>13 A They show that there is a significantly increased risk</div> <div>14 at that level, yes.</div> <div>15 Q And how significantly increased?</div> <div>16 A I believe it's four fold in some studies. In other</div> <div>17 studies if you go to about .15 the rates could go up to about 20</div> <div>18 fold.</div> <div>19 Q Okay. So -- And so -- And even if the fiber per cc</div> <div>20 year level is below 0.1, would there still be a significant</div> <div>21 increased risk but it would just be less?</div> <div>22 A Correct.</div> <div>23 Q And is that part of a dose-response effect of asbestos</div> <div>24 in causing mesothelioma?</div> <div>25 A Yes. You can look at it that way. Mesothelioma is a</div>		
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<div>1 THE COURT: Doctor, it's possible a juror might</div> <div>2 complain about --</div> <div>3 THE WITNESS: That's fine.</div> <div>4 THE COURT: -- if it gets a little bit stuffy.</div> <div>5 Maybe we can try to get you a jacket if that happens or</div> <div>6 maybe a juror won't complain and everything will be fine.</div> <div>7 We try to accommodate.</div> <div>8 THE WITNESS: Thank you.</div> <div>9 COURT OFFICER: All rise. Jury entering.</div> <div>10 (Whereupon the jury panel entered the courtroom.)</div> <div>11 THE COURT: Good morning. And please be seated</div> <div>12 everyone. Thank you. We apologize for the delay. Please</div> <div>13 continue.</div> <div>14 CONTINUED DIRECT EXAMINATION</div> <div>15 BY MR. BLOCK:</div> <div>16 Q Good morning, Dr. Moline.</div> <div>17 MR. BLOCK: Good morning, ladies and gentlemen.</div> <div>18 THE JURY: Good morning.</div> <div>19 Q Dr. Moline, I want to go back to one point from</div> <div>20 yesterday. You testified yesterday about something called a</div> <div>21 fiber per cc year. Do you remember that?</div> <div>22 A Yes.</div> <div>23 Q And we talked about that exposure to 0.1 fiber per cc</div> <div>24 level for ten years, that would equal one fiber per cc year. Do</div> <div>25 you recall that testimony from yesterday?</div>	<div>1 dose-response disease where you see it, of all the asbestos-</div> <div>2 related diseases, it's something you can see at the lowest dose.</div> <div>3 And we also know the more of a dose you get, the more likely you</div> <div>4 are to develop mesothelioma. So, for individuals who have had</div> <div>5 even more exposure, their risk is even higher.</div> <div>6 Q Okay. And yesterday you talked about the Gordon,</div> <div>7 Millette paper published in the peer-reviewed literature in</div> <div>8 2014. Where does Dr. Gordon work?</div> <div>9 A At Mount Sinai.</div> <div>10 Q Here in New York?</div> <div>11 A Correct.</div> <div>12 Q Okay. And you testified yesterday that exposure at the</div> <div>13 level that that they identified of asbestos of being in the air</div> <div>14 when talcum powder is used of 1.9 fiber per cc is sufficient to</div> <div>15 cause mesothelioma. Do you recall that testimony from</div> <div>16 yesterday?</div> <div>17 A I do.</div> <div>18 Q Did the authors in the Gordon, Millette article</div> <div>19 conclude that exposure to asbestos from talcum powder is capable</div> <div>20 of causing mesothelioma?</div> <div>21 A Yes.</div> <div>22 Q Did they?</div> <div>23 A They did, yes.</div> <div>24 Q And do you agree with that?</div> <div>25 A I do agree with that, yes.</div>		

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<p>1 Q Yesterday you talked about the amount of baby powder</p> <p>2 that Johnson and Johnson has found is typically applied, and I</p> <p>3 think you said 3.7 grams. Do you recall that testimony?</p> <p>4 A Yes.</p> <p>5 Q And have you reviewed Johnson & Johnson documents on</p> <p>6 that issue?</p> <p>7 A I have.</p> <p>8 Q Let me show you what has been marked as Exhibits 319</p> <p>9 and 320. So, 319 and 320 --</p> <p>10 MS. PAGONIS: Your Honor, we do have objections to</p> <p>11 these two exhibits.</p> <p>12 MR. BLOCK: Can I lay a foundation before you hear</p> <p>13 their objection, your Honor?</p> <p>14 THE COURT: Go ahead.</p> <p>15 Q Okay. Are these documents based upon the bates label</p> <p>16 that appears on the bottom, are these documents that are</p> <p>17 produced by Johnson & Johnson?</p> <p>18 A Yes.</p> <p>19 Q And are these documents that have Johnson & Johnson</p> <p>20 letterhead on them?</p> <p>21 A Yes.</p> <p>22 Q And do these two documents, Exhibits 319 and 320,</p> <p>23 document user studies that Johnson & Johnson conducted or one of</p> <p>24 the findings that Johnson & Johnson made was the amount of</p> <p>25 talcum powder in terms of the number of grams that is typically</p>		<p>1 irrelevant to the issues in this case. And there has been</p> <p>2 really no foundation other than it has a bates, J & J bates</p> <p>3 number for this witness to be discussing these two</p> <p>4 documents.</p> <p>5 MR. BLOCK: Your Honor, these are -- these are</p> <p>6 clearly ancient documents of Johnson & Johnson. They are</p> <p>7 more than 30 years old. They're on Johnson & Johnson</p> <p>8 letterhead. They are produced by Johnson & Johnson in</p> <p>9 litigation. There is no dispute as to authenticity. They</p> <p>10 were produced from the proper custody of Johnson & Johnson.</p> <p>11 There is no indication of fraud or invalidity.</p> <p>12 As to the hearsay issue, the ancient document rule,</p> <p>13 they clearly come in. Of course they're likely also</p> <p>14 admissible under the business record exception. We don't</p> <p>15 have to get there.</p> <p>16 In terms of relevance, your Honor, Dr. Moline has</p> <p>17 testified that it is significant in her opinion that Johnson</p> <p>18 & Johnson has determined that the average amount of baby</p> <p>19 powder that is applied by women based upon Johnson &</p> <p>20 Johnson's own studies is approximately 3.7 grams. If you</p> <p>21 look at Exhibit 319, Johnson & Johnson did a study and they</p> <p>22 found that the average amount, third paragraph of 319, the</p> <p>23 average amount of powder applied per application was</p> <p>24 6.1 grams for males and 3.7 grams for females.</p> <p>25 On Exhibit 320 there is another -- they talk about</p>	
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<p>1 applied by a Johnson & Johnson Baby Powder product user?</p> <p>2 A Yes, they do.</p> <p>3 MR. BLOCK: Your Honor, plaintiffs move Exhibits</p> <p>4 319 and 320 into evidence.</p> <p>5 MS. PAGONIS: Same objection, your Honor.</p> <p>6 THE COURT: Shall we have a conversation in the</p> <p>7 back.</p> <p>8 MS. PAGONIS: We shall.</p> <p>9 (Whereupon the following proceedings were held</p> <p>10 outside of the presence of the jury.)</p> <p>11 THE COURT: Yes. Do I know what these are? Oh,</p> <p>12 yes. This is what we were walk talking about yesterday. We</p> <p>13 didn't talk about it much. You just showed it to me.</p> <p>14 MR. BLOCK: Right. This is what Dr. Moline</p> <p>15 testified somewhat about.</p> <p>16 MS. PAGONIS: What she's testified to is that it</p> <p>17 has a J & J bates number on it. We object to both documents</p> <p>18 319 and PX 320 on the basis they are both hearsay and to</p> <p>19 relevance. These documents are surveys or refer to survey</p> <p>20 and survey results that were done with respect to employees</p> <p>21 and their use of baby powder. Has nothing to do with the</p> <p>22 allegations in this case of baby powder containing any type</p> <p>23 of asbestos. There is no correlation to Mrs. Olson's use of</p> <p>24 the product and these survey participants who were</p> <p>25 characterized as heavy users. So, they're completely</p>		<p>1 a study, 60 members, in-house panel participated in a baby</p> <p>2 home usage study. And if you go to the next page, it says</p> <p>3 amount used. And you see the female column, your Honor,</p> <p>4 3.7 grams. And this is really relevant information. It's</p> <p>5 relevant to Dr. Moline. It's relevant for the jury in that</p> <p>6 there has been evidence that there is thousands or millions</p> <p>7 or even billions of asbestos fibers per gram in Johnson's</p> <p>8 Baby Powder. And so the amount that is typically applied,</p> <p>9 Johnson & Johnson has a study about it. We can't go back</p> <p>10 and measure the precise number of grams that Mrs. Olson</p> <p>11 used. We know that, you know -- we know that she shook it</p> <p>12 on her body. We know she shook it on her hand, put it on</p> <p>13 her body. But Johnson & Johnson did a study. This is the</p> <p>14 best evidence of the issue of how much is applied, and Dr.</p> <p>15 Moline has already testified to the jury without objection</p> <p>16 that she has reviewed Johnson & Johnson historical</p> <p>17 documents, and they show that 3.7 grams is typically</p> <p>18 applied. And Dr. Moline testified that the Gordon, Millette</p> <p>19 study they only applied 0.37 grams. So, that was a light</p> <p>20 usage, the Gordon, Millette study, as compared to what</p> <p>21 actual users use according to Johnson & Johnson. This is an</p> <p>22 admissible document, your Honor, and it should be admitted</p> <p>23 now. I should be able to proceed with my exam.</p> <p>24 THE COURT: Thank you. You have the last word.</p> <p>25 MS. PAGONIS: Your Honor, if you look at 319, the</p>	

<p style="text-align: right;">Page 2187</p> <p>1 first paragraph, and you'll see it's referring to another</p> <p>2 report done by a Mr. Newman and his memoranda. So, you have</p> <p>3 hearsay within hearsay in this document. We don't have the</p> <p>4 Newman report. And again, you know, this is survey results</p> <p>5 of limited people, again having nothing to do with the</p> <p>6 allegation of contamination. And these users again</p> <p>7 characterizes heavy users. And no foundation laid for these</p> <p>8 documents.</p> <p>9 MR. BLOCK: It all goes to the weight of the</p> <p>10 evidence, your Honor. If they have some other study that's</p> <p>11 referred to here --</p> <p>12 THE COURT: Thank you. Let me just read it,</p> <p>13 please. (Examining). I'm not troubled by the reference to</p> <p>14 Mr. Newman's memoranda dated September 14 and 19, because</p> <p>15 this is understandable, even without regard to that</p> <p>16 reference, it's relevant. These are ancient documents. I</p> <p>17 don't see any reason to exclude them. They are admitted and</p> <p>18 Dr. Moline may talk about them. Thank you.</p> <p>19 MS. PAGONIS: Thank you.</p> <p>20 (Continue on the next page.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 2189</p> <p>1 together with the jury. Is this a document from Johnson &</p> <p>2 Johnson dated October 18, 1978?</p> <p>3 A Yes.</p> <p>4 Q And it says here that, um, they had a group, 60</p> <p>5 panelists were identified as probably being heavy users of JBP,</p> <p>6 Johnson's baby powder, and that they were recruited for a home</p> <p>7 usage study; is that right?</p> <p>8 A Correct.</p> <p>9 Q It says here, "The average amount of powder applied per</p> <p>10 application was 6.1 grams for males, 3.7 grams for females, and</p> <p>11 4.9 grams for the entire panel." Is that what it says?</p> <p>12 A Yes, it does.</p> <p>13 Q Then it says that there was a -- they also did some</p> <p>14 "motel studies" where they recruited people to apply the baby</p> <p>15 powder. And they conducted studies at a motel; is that right?</p> <p>16 A Correct.</p> <p>17 Q And then on the bottom they also calculated an average</p> <p>18 amount of baby powder that is used by mothers on babies; is that</p> <p>19 right?</p> <p>20 A Correct.</p> <p>21 Q And it says here that "The average amount used per</p> <p>22 application by mothers on babies after bathing them was found to</p> <p>23 be 0.9 grams"; is that right?</p> <p>24 A Correct.</p> <p>25 Q So was the amount that Johnson & Johnson found that was</p>
<p style="text-align: right;">Page 2188</p> <p>1 (Whereupon, the following takes place in open court</p> <p>2 in the presence of all parties and the sworn jurors that are</p> <p>3 properly seated.)</p> <p>4 THE COURT: Thank you. Objection overruled.</p> <p>5 MR. BLOCK: So, your Honor, plaintiff moves</p> <p>6 Exhibits 319 and 320 into evidence. Should they be marked</p> <p>7 now or later?</p> <p>8 THE COURT: What do you prefer?</p> <p>9 MR. BLOCK: The actual marking can take place</p> <p>10 later, but they are admitted into evidence.</p> <p>11 (Whereupon, Plaintiff's Exhibits 319 and 320 are</p> <p>12 deemed marked in evidence.)</p> <p>13 THE COURT: Yes.</p> <p>14 MR. BLOCK: Thank you.</p> <p>15 Q Dr. Moline, have you seen Exhibit 319 before?</p> <p>16 A I have.</p> <p>17 Q And is this one of the documents that you are relying</p> <p>18 upon for your statement yesterday to the jury that Johnson &</p> <p>19 Johnson has conducted studies and determined that with respect</p> <p>20 to females, approximately 3.7 grams of baby powder are typically</p> <p>21 applied?</p> <p>22 A Yes.</p> <p>23 (Whereupon, a demonstrative aid was shown on the</p> <p>24 screen.)</p> <p>25 Q And so if we look -- we could look at this document</p>	<p style="text-align: right;">Page 2190</p> <p>1 applied to babies, typically by mothers, was that also more than</p> <p>2 the amount of powder that was used in the Gordon/Millette study</p> <p>3 which showed a 1.9 fiber per cc of asbestos in the air?</p> <p>4 A Yes.</p> <p>5 Q And do these studies look at the different ways women</p> <p>6 and men would apply the powder --</p> <p>7 (Whereupon, a demonstrative aid was shown on the</p> <p>8 screen.)</p> <p>9 Q -- on the next page here?</p> <p>10 A Yes.</p> <p>11 Q It talks about shaking the powder directly from the</p> <p>12 container onto the body, shaking the powder into the hand and</p> <p>13 then rubbing on the body. Those were the two most common ways?</p> <p>14 A Yes.</p> <p>15 (Whereupon, a demonstrative aid was shown on the</p> <p>16 screen.)</p> <p>17 Q And is Exhibit 320 similar? Does it discuss similar</p> <p>18 studies by Johnson & Johnson, or I guess in some cases the same</p> <p>19 studies?</p> <p>20 We just looked at a document from October 18, 1978. So</p> <p>21 now we are going back two years, December 15, 1976. And it</p> <p>22 talks about a "60 member in-house panel participated in a baby</p> <p>23 powder home usage study. These panelists were selected because</p> <p>24 they were heavy powder users."</p> <p>25 Do you see that?</p>

<p>Moline - Plaintiff - Direct (Mr. Block) Page 2191</p> <p>1 A Yes. I think these 60 folks are referenced in the '78</p> <p>2 memo, and then they did an additional motel study --</p> <p>3 Q Right.</p> <p>4 A -- they called it. That looked at additional</p> <p>5 individuals for their powder use. So they were comparing the</p> <p>6 two different groups to see if the powder usage amounts were</p> <p>7 similar, or what they were.</p> <p>8 Q Okay.</p> <p>9 (Whereupon, a demonstrative aid was shown on the</p> <p>10 screen.)</p> <p>11 Q If we look at this 1976 document, does it indicate that</p> <p>12 number 3.7 grams for females?</p> <p>13 A Yes.</p> <p>14 Q Are those the type of documents, historical documents</p> <p>15 from Johnson & Johnson that you are relying upon when you gave</p> <p>16 the testimony to the jury that the amount of baby powder that</p> <p>17 Johnson & Johnson found is typically applied by users is</p> <p>18 actually about ten times higher than what was used in the</p> <p>19 Gordon/Millette study when asbestos was monitored into the air?</p> <p>20 A Yes, it is.</p> <p>21 Q Okay. Let me go back to where we left off yesterday.</p> <p>22 And we were talking about the fact that even if there is less</p> <p>23 than .25 percent of asbestos in talc, that you could still have</p> <p>24 billions of asbestos fibers per gram in that material; is that</p> <p>25 right?</p>	<p>Moline - Plaintiff - Direct (Mr. Block) Page 2193</p> <p>1 Q So from an occupational and environmental medicine</p> <p>2 standpoint, what is the significance of a finding of point zero</p> <p>3 -- of .20 percent anthophyllite asbestos, by weight, in</p> <p>4 Johnson's baby powder?</p> <p>5 What's the significance of this finding, in terms of</p> <p>6 from a standpoint of occupational and environmental medicine and</p> <p>7 health?</p> <p>8 A Well, it is showing in a bulk sample that there is a</p> <p>9 percentage that is measurable of anthophyllite asbestos that is</p> <p>10 capable of elaborating billions of fibers into the air, and it's</p> <p>11 -- can cause health consequences.</p> <p>12 Q So in terms of the use of the product, what is the</p> <p>13 significance of the fact that this product is being shaken onto</p> <p>14 a person's body, let's say in the chest area, near the breathing</p> <p>15 zone?</p> <p>16 A Well, it's -- it's getting into the air and people have</p> <p>17 the opportunity to breathe it in. Whether it's being put on the</p> <p>18 chest or below the waist, it still gets into the air.</p> <p>19 But someone pouring a powder that is not bound by</p> <p>20 anything that is, um, is described as like a cloud of dust by</p> <p>21 many individuals, but it is light and it gets into the air, and</p> <p>22 it's close to where someone is going to take a breath.</p> <p>23 Q So let's take like a floor tile that contains asbestos.</p> <p>24 Now, a floor tile that contains asbestos, if you are not</p> <p>25 scraping it or if you are not cutting it, if it's just sitting</p>
<p>Moline - Plaintiff - Direct (Mr. Block) Page 2192</p> <p>1 A Yes.</p> <p>2 Q And you talked about a published study by Rohl, from</p> <p>3 Mt. Sinai, as one of the bases in your opinion in that regard?</p> <p>4 A Yes.</p> <p>5 Q So if we look at Exhibit 44, which is in evidence, and</p> <p>6 I'll just put it up on the screen.</p> <p>7 (Whereupon, a demonstrative aid was shown on the</p> <p>8 screen.)</p> <p>9 Q I'll try to make it larger, Dr. Moline. And if you are</p> <p>10 able to, from sitting there -- I'm going to blow it up.</p> <p>11 (Whereupon, a demonstrative aid was enlarged on the</p> <p>12 screen.)</p> <p>13 Q Dr. Moline, have you seen this testing, which is in</p> <p>14 evidence as Exhibit 44, done by this laboratory, Forensic</p> <p>15 Analytical, December 19, 2003, which tested Johnson's baby</p> <p>16 powder for the presence of asbestos?</p> <p>17 A Yes, I've seen this document.</p> <p>18 Q Okay.</p> <p>19 And looking at this document, it says the asbestos, in</p> <p>20 terms of the weight percentage, is .20 percent; is that right?</p> <p>21 A Yes.</p> <p>22 Q Point two zero percent. And it indicates this is in</p> <p>23 2003. And it finds anthophyllite asbestos in Johnson's baby</p> <p>24 powder; is that correct?</p> <p>25 A Yes.</p>	<p>Moline - Plaintiff - Direct (Mr. Block) Page 2194</p> <p>1 there, is that going to be a dusty, powdery product?</p> <p>2 A It is not, because it's bound up in resins and in a</p> <p>3 variety of other compounds that make it so that the -- the</p> <p>4 asbestos is not what we call friable or respirable. So it's a</p> <p>5 totally different type of product.</p> <p>6 Q Is the asbestos contained in Johnson's baby powder, as</p> <p>7 reported here in 2003, is that asbestos friable, as you just</p> <p>8 used the term?</p> <p>9 A Yes.</p> <p>10 Q And what does that mean? What does the word friable</p> <p>11 mean as discussed by the EPA and in the scientific literature?</p> <p>12 A "Friable" means it's capable of generating dust. When</p> <p>13 you use it in the term, um, with dusts and asbestos. It has</p> <p>14 some other medical terms, but something that is -- can be broken</p> <p>15 up and become airborne.</p> <p>16 Q Let me show you Plaintiff's Exhibit 54A.</p> <p>17 (Whereupon, Plaintiff's Exhibit 54A was handed to the</p> <p>18 witness.)</p> <p>19 Q Have you seen Exhibit 54A before?</p> <p>20 A Yes.</p> <p>21 Q Is Exhibit 54A a memo discussing testing of Italian</p> <p>22 talc at the South Plainfield, New Jersey Mill, where the Italian</p> <p>23 talc that was used in Cashmere Bouquet and in Johnson's baby</p> <p>24 powder was milled?</p> <p>25 MS. PAGONIS: Objection. Leading.</p>

<p>Moline - Plaintiff - Direct (Mr. Block) Page 2195</p> <p>1 THE COURT: You may answer that.</p> <p>2 A Yes, it is.</p> <p>3 Q And does this Exhibit 54A identify asbestos in the air</p> <p>4 from that Italian talc?</p> <p>5 A Yes, it does.</p> <p>6 MR. BLOCK: Plaintiff moves Exhibit 54A into</p> <p>7 evidence.</p> <p>8 MS. PAGONIS: No objection.</p> <p>9 THE COURT: It's admitted.</p> <p>10 (Whereupon, Plaintiff's Exhibit 54A is deemed</p> <p>11 marked in evidence.)</p> <p>12 Q So the jury has heard --</p> <p>13 (Whereupon, a demonstrative aid was shown on the</p> <p>14 screen.)</p> <p>15 Q -- that Italian talc was used in Johnson's baby powder</p> <p>16 prior to 1967, in the 1950s, as far back as 1940s, um, through</p> <p>17 1967, and that also the Italian talc was used in 1980 when the</p> <p>18 Vermont talc workers went on strike. Is that consistent with</p> <p>19 your understanding?</p> <p>20 A Yes.</p> <p>21 Q So here we have, from the 1980s, and let's look at the</p> <p>22 date. It refers to a visit by MSHA. Who are they?</p> <p>23 A The Mine Safety and Health Administration.</p> <p>24 Q It's referring to a visit by the Mine Safety and Health</p> <p>25 Administration to Cyprus Industrial Minerals Company, South</p>	<p>Moline - Plaintiff - Direct (Mr. Block) Page 2197</p> <p>1 terms of the MSHA finding anthophyllite asbestos in the air from</p> <p>2 the talc, and in terms of what they are saying about the</p> <p>3 percentage of asbestos in that talc?</p> <p>4 A Well, it's consistent with the finding that there's a</p> <p>5 percentage of asbestos that can be measured in the Italian talc.</p> <p>6 And then what they were able to do was both measure the bulk</p> <p>7 sample and take that bulk sample and see what percent of that</p> <p>8 became airborne. And they were able to measure that on filters</p> <p>9 in a standard method that is done in -- when one is doing an</p> <p>10 assessment of what would be in the breathing zone of an</p> <p>11 individual.</p> <p>12 So they are using standard protocols to do the</p> <p>13 measurements to see what is actually -- they are taking the bulk</p> <p>14 product and then looking to see what goes into the air, which</p> <p>15 is, from the health perspective, the important aspect.</p> <p>16 Q It says here at the bottom, the question was asked "Why</p> <p>17 did Cyprus Industrial Minerals not detect the anthophyllite in</p> <p>18 the Italian talc?"</p> <p>19 And it indicates here, "The answer is that the</p> <p>20 detection limit for anthophyllite by XRD is only about two</p> <p>21 percent." Do you see that?</p> <p>22 A Yes.</p> <p>23 MS. PAGONIS: Objection. Leading.</p> <p>24 Q Well, did I read that sentence correctly?</p> <p>25 THE COURT: Overruled.</p>
<p>Moline - Plaintiff - Direct (Mr. Block) Page 2196</p> <p>1 Plainfield Mill, and does it indicate that the MSHA tested</p> <p>2 personnel, monitored them with air filter, and took air filter</p> <p>3 samples, that were sent and analyzed by optical and electron</p> <p>4 microscope, and that the filters reported 5.8 percent</p> <p>5 anthophyllite and asbestiform amphiboles; is that what it</p> <p>6 states?</p> <p>7 A Yes.</p> <p>8 Q And then lower on the page it states that in terms of</p> <p>9 the percentage of total fibers, that the MSHA found from that</p> <p>10 Italian talc being milled, 5.8 percent of the total fibers were</p> <p>11 anthophyllite asbestos; is that what it indicates?</p> <p>12 A Yes.</p> <p>13 Q And then are you familiar with, later on in this</p> <p>14 document --</p> <p>15 (Whereupon, a demonstrative aid was shown on the</p> <p>16 screen.)</p> <p>17 Q -- that it says that they are estimating that there</p> <p>18 would be approximately 0.6 percent anthophyllite asbestos in the</p> <p>19 Italian talc?</p> <p>20 A In the bulk talc, yes.</p> <p>21 Q So this is 1984, MSHA. And we have a statement about</p> <p>22 point six percent anthophyllite asbestos in the Italian talc; is</p> <p>23 that correct?</p> <p>24 A Yes.</p> <p>25 Q So how is this document significant to your opinions in</p>	<p>Moline - Plaintiff - Direct (Mr. Block) Page 2198</p> <p>1 A You did.</p> <p>2 Q What if any concern or significance is there about that</p> <p>3 from an environmental medicine and occupational medicine</p> <p>4 standpoint?</p> <p>5 A If a result is reported as non-detect, you have to look</p> <p>6 and see what the limits of detection are, because if a method</p> <p>7 doesn't detect small amounts because it's incapable of</p> <p>8 differentiating, then they are going to report the result as</p> <p>9 asbestos not found in this case.</p> <p>10 Yet, if they use a more sophisticated measurement, they</p> <p>11 can actually detect that it is truly present, so it would no</p> <p>12 longer be a non-detect.</p> <p>13 So if you are using a methodology that has a high limit</p> <p>14 of detection, then you don't know what the levels might be below</p> <p>15 their limit of detection.</p> <p>16 So a non-detect does not mean zero. It means that the</p> <p>17 analytical method is not sensitive enough to be able to find it.</p> <p>18 Q Let me show you another exhibit admitted into evidence.</p> <p>19 It's Exhibit 42?</p> <p>20 (Whereupon, a demonstrative aid was shown on the</p> <p>21 screen.)</p> <p>22 Q Again, I want to see if I could project it onto the</p> <p>23 screen sufficient for you to see it. This is a document that is</p> <p>24 admitted into evidence, Exhibit 42, which documents testing done</p> <p>25 by the FDA on samples looked at by Dr. Lewin.</p>

<p>Moline - Plaintiff - Direct (Mr. Block) Page 2199</p> <p>1 Are you familiar with this testing?</p> <p>2 A Yes, I am.</p> <p>3 Q And the jury has seen that in this document there is a</p> <p>4 signature by a Yates, a Mr. Yates, January 2nd, 1974. And then</p> <p>5 an Eiermann from January 1st, 1974. And the jury has seen the</p> <p>6 results on this page that I would like to ask you about.</p> <p>7 (Whereupon, a demonstrative aid was shown on the</p> <p>8 screen.)</p> <p>9 Q It says here, "Examination of talc samples by optical</p> <p>10 microscopy, according to the method published in the federal</p> <p>11 register is proceeding." And then it says they tested sample</p> <p>12 84. And Sample Number 84 was found to contain 107 fibers of</p> <p>13 tremolite/actinolite per milligram.</p> <p>14 What is the conversion of that for a gram?</p> <p>15 A I'm sorry. What's the conversion of?</p> <p>16 Q Of 107 fibers of tremolite/actinolite per milligram.</p> <p>17 What does that convert to in terms of a gram? How many fibers</p> <p>18 of tremolite/actinolite asbestos per gram would that be?</p> <p>19 A So there are a thousand milligrams in a gram. So it</p> <p>20 would be 107,000 fibers per gram.</p> <p>21 Q Okay.</p> <p>22 And are you aware, the jury has seen that Exhibit 43</p> <p>23 identifies Lewin's Sample Number 84 as Shower to Shower --</p> <p>24 (Whereupon, a demonstrative aid was shown on the</p> <p>25 screen.)</p>	<p>Moline - Plaintiff - Direct (Mr. Block) Page 2201</p> <p>1 that going to compare to the OSHA permissible exposure level of</p> <p>2 zero point one fiber per cc?</p> <p>3 A It's orders of magnitude higher. We know from the</p> <p>4 testing that's been done that it's at least -- it's almost 20</p> <p>5 times higher. In some case even higher than that.</p> <p>6 Q Let me show you another document that's admitted into</p> <p>7 evidence.</p> <p>8 (Whereupon, a demonstrative aid was shown on the</p> <p>9 screen.)</p> <p>10 Q Have you reviewed and seen the paper by Dr. Alice</p> <p>11 Blount, published in the peer-reviewed literature in 1991?</p> <p>12 A Yes.</p> <p>13 Q And are you familiar with a journal, Environmental</p> <p>14 Health Prospectus?</p> <p>15 A Yes.</p> <p>16 Q Tell us about that journal?</p> <p>17 A It's a journal that is published by the National</p> <p>18 Institute of Environmental Health Sciences, which is a division</p> <p>19 of the National Institutes of Health.</p> <p>20 Q And the jury has seen the table showing -- let me see</p> <p>21 if I could get this?</p> <p>22 (Whereupon, a demonstrative aid was shown on the</p> <p>23 screen.)</p> <p>24 Q Okay.</p> <p>25 The jury has seen the table showing the identification</p>
<p>Moline - Plaintiff - Direct (Mr. Block) Page 2200</p> <p>1 Q -- manufactured by Johnson & Johnson.</p> <p>2 A Yes.</p> <p>3 Q And what is the significance of the use of a powder</p> <p>4 that contains thousands of asbestos fibers per gram being put</p> <p>5 onto a person's chest, or a person's underarms, shaking it onto</p> <p>6 their body? What is the health significance of that?</p> <p>7 A That when they are shaking it onto the body, it goes</p> <p>8 not only onto the body, but into the air, and they are going to</p> <p>9 be breathing in asbestos.</p> <p>10 Q And -- so yesterday I had a one liter bottle. So</p> <p>11 yesterday you described that the level of asbestos in the</p> <p>12 ambient air or the background air is something like point -- is</p> <p>13 approximately .0001 fibers per cc, and you described that that</p> <p>14 would be one fiber in ten liters of air?</p> <p>15 A Correct.</p> <p>16 Q And so when you take a powder that contains thousands</p> <p>17 or millions of asbestos fibers per gram and you put it onto your</p> <p>18 body, what exposure is that going to create compared to the</p> <p>19 level of asbestos in the ambient air?</p> <p>20 A The orders of magnitude higher.</p> <p>21 Q We looked at the OSHA PEL of zero point one fibers per</p> <p>22 cc, and you talked about how that would be 100 fibers in one</p> <p>23 liter of air, and if someone is taking a powder that contains</p> <p>24 thousands of fibers per gram, or millions of fibers of asbestos</p> <p>25 per gram and it's put on their body and up in the air, how is</p>	<p>Moline - Plaintiff - Direct (Mr. Block) Page 2202</p> <p>1 of tremolite asbestos, needles and fibers, in what is referred</p> <p>2 to as Sample I. Do you see that?</p> <p>3 A Yes.</p> <p>4 Q And is that something you've reviewed before?</p> <p>5 A It is.</p> <p>6 Q And is that something you've considered in your</p> <p>7 testimony -- one of the things you considered in giving your</p> <p>8 testimony and opinions here today?</p> <p>9 A Yes.</p> <p>10 Q And if you were a clinician or a doctor and you go to</p> <p>11 the peer-reviewed literature and you want to know, what is this</p> <p>12 Sample I that is found to contain needles and fibers of</p> <p>13 tremolite asbestos, is there anything in this article that would</p> <p>14 alert the practicing doctor, clinician about what Sample I is?</p> <p>15 A No. You would have to contact the scientist to find</p> <p>16 out which one -- what Sample I is. You would ask for a key. It</p> <p>17 might be as an appendix to the article, or it might be provided</p> <p>18 by the author.</p> <p>19 I mean, typically products aren't listed in articles by</p> <p>20 convention. You don't list the brand name of something, unless</p> <p>21 you are doing a clinical trial on the brand name of a drug. But</p> <p>22 it's typical to give letters to it. But you want to know the</p> <p>23 key. If you had a patient that might have had exposure, you</p> <p>24 would want to know what the various samples were.</p> <p>25 Q And when you go to the last page of the article --</p>

<p>Moline - Plaintiff - Direct (Mr. Block) Page 2203</p> <p>1 (Whereupon, a demonstrative aid was shown on the 2 screen.) 3 Q -- there is no identification of what Sample I is; is 4 that right? 5 A Correct. 6 Q But have you seen Exhibit 12, which was produced by 7 Johnson & Johnson, where their copy of the article, the very 8 next page -- so we have 436. The very next page, 437? 9 (Whereupon, a demonstrative aid was shown on the 10 screen.) 11 Q Identifies Sample I as being J&J, Johnson's baby 12 powder? 13 A Yes. 14 Q When was the first time you saw this? 15 A I saw the key probably about three years ago. 16 Q And was it only after it was produced in litigation by 17 Johnson & Johnson? 18 A Yes. 19 Q And what is the significance, from a health standpoint, 20 of Dr. Blount finding tremolite asbestos, needles and fibers in 21 Sample I, which is identified here as Johnson & Johnson, 22 Johnson's baby powder? 23 MS. PAGONIS: Objection, your Honor. If we could 24 approach. 25 THE COURT: Do you want to go in the back or on the</p>	<p>Moline - Plaintiff - Direct (Mr. Block) Page 2205</p> <p>1 be J&J is out, excluded. And his question referred to, I 2 believe, referenced Dr. Blount's finding Sample I containing 3 tremolite asbestos, which is a J&J product. So it violates 4 the Court's order. 5 MR. BLOCK: Your Honor, first of all, I can bring 6 out, if they would like, where it says tremolite asbestos in 7 the article. So that's the first argument. 8 The second argument is that Dr. Moline is relying 9 upon Exhibit 12, which is the key. And I specifically asked 10 her about her opinions about the finding of tremolite 11 asbestos in what has been identified here. The key is 12 Johnson & Johnson's baby powder and the health significance 13 of that. 14 And Exhibit 12 has been admitted for all purposes. 15 Your Honor specifically ruled that you were not going to 16 allow Dr. Blount's testimony with the respect to the 17 identification of Sample I, but that plaintiffs -- 18 THE COURT: Deposition. 19 MR. BLOCK: Her deposition testimony. But that 20 plaintiffs are free to present evidence from other sources 21 about the identity of Sample I. Exhibit 12, you have a 22 written order admitting this for all purposes, including the 23 truth. And I think my question is proper. And Dr. Moline 24 is giving expert opinion about asbestos in Johnson's baby 25 powder.</p>
<p>Moline - Plaintiff - Direct (Mr. Block) Page 2204</p> <p>1 side? 2 MS. PAGONIS: The back, your Honor. 3 THE COURT: Be right back. 4 (Whereupon, the following takes place on the record 5 in the robing room among the Court and all Counsel.) 6 THE COURT: Yes. May I see the document we are 7 talking about. 8 MS. PAGONIS: It's actually an objection to the 9 question, your Honor. 10 MR. BLOCK: This is Exhibit 12. It was admitted 11 into evidence for all purposes, pursuant to Johnson & 12 Johnson's stipulation in your written order. 13 MS. PAGONIS: Your Honor, two points with respect 14 to our objection. 15 First of all, he keeps referring to the document -- 16 what is that? 17 MR. BLOCK: Exhibit 12. 18 MS. PAGONIS: Exhibit 12 as a finding of tremolite 19 and that table doesn't refer to tremolite. But more 20 importantly, our objection is in your Honor's order. 21 MR. KURLAND: Asbestos. 22 MS. PAGONIS: Tremolite asbestos. I'm sorry. 23 In your Honor's order, with respect to the Blount 24 testimony, you had said that testimony about Sample I from 25 Ms. Blount -- excuse me, that Dr. Blount found asbestos I to</p>	<p>Moline - Plaintiff - Direct (Mr. Block) Page 2206</p> <p>1 MR. KURLAND: I just will read the Court's 2 statement with this regard. The Court's order it says, 3 "Plaintiffs may not introduce into evidence any statements 4 from Dr. Blount's deposition regarding Sample I, or argue 5 that Dr. Blount's deposition testimony shows that her 1991 6 study found asbestos in Johnson & Johnson talc." 7 So we are very close to the line here. To be 8 specific is a statement elicited from either in the question 9 or from an answer that Dr. Blount found asbestos in 10 Johnson & Johnson talc in this study. And that is the 11 issue. 12 The study is in. It doesn't say what Sample I is. 13 The key is in. It says what Sample I is. But drawing the 14 connection that the key means that Dr. Blount found asbestos 15 in Sample I in the study is what the Court said, in our 16 understanding of the order, is out. 17 So they could use the key; they could use the 18 study, but to connect those dots and say Dr. Moline, is it 19 significant to you that Dr. Blount found Sample I to be 20 asbestos in this study, that's the inference that the court 21 is not permitting here. And that is what we are concerned 22 about in this question. 23 MR. BLOCK: Your Honor, your decision is a written 24 order. You wrote it so you could be clear to the parties. 25 You said -- it was a ruling on Dr. Blount's deposition and</p>

<p>Moline - Plaintiff - Direct (Mr. Block) Page 2207</p> <p>1 those designations. And you said that you felt that</p> <p>2 Dr. Blount's testimony about Sample I was confusing, or that</p> <p>3 it was uncertain. And so you weren't allowing Dr. Blount to</p> <p>4 talk about that in her depositions. You were putting those</p> <p>5 portions out.</p> <p>6 But your Honor, in the same order, admitted Exhibit</p> <p>7 12 for all purposes, including its truth. And your Honor,</p> <p>8 specifically said that plaintiff -- it says here,</p> <p>9 "Plaintiffs may seek to establish, through other evidence,</p> <p>10 that Sample I in the 1991 study was Johnson & Johnson talc,</p> <p>11 but not by means of Dr. Blount's deposition." And your</p> <p>12 Honor, please.</p> <p>13 THE COURT: What other way are you establishing.</p> <p>14 MR. BLOCK: I mean, your Honor, it's obvious. They</p> <p>15 produced the document from their files in a document that's</p> <p>16 been admitted for all purposes, and they have the key</p> <p>17 attached. Whether they wrote it or whether Dr. Blount wrote</p> <p>18 it is irrelevant. It's got A through O, and it says</p> <p>19 "Johnson & Johnson, JBP."</p> <p>20 If they want to bring in someone from Johnson &</p> <p>21 Johnson that says that, you know, either this didn't come</p> <p>22 from Dr. Blount, or the person who wrote it just, you know</p> <p>23 got it wrong. If they have a foundation with somebody who</p> <p>24 could do that, they could do that. But, your Honor, I mean,</p> <p>25 we have the key. And if they want to cross examine</p>	<p>Moline - Plaintiff - Direct (Mr. Block) Page 2209</p> <p>1 And that really goes to if they want it try to</p> <p>2 undermine --</p> <p>3 THE COURT: Let me get your exact question. Let me</p> <p>4 write it down, how did you phrased it.</p> <p>5 MR. BLOCK: Can it be read back?</p> <p>6 THE COURT REPORTER: Yes.</p> <p>7 THE COURT: Okay. I'm going to think about that</p> <p>8 over lunch. If you ask other questions, or is that a</p> <p>9 problem?</p> <p>10 MR. BLOCK: Your Honor, I will rephrase it to try</p> <p>11 to keep going. I will just say, what is the significance of</p> <p>12 this article identifying tremolite asbestos in Sample I,</p> <p>13 which is identified in this key as Johnson's baby powder? I</p> <p>14 mean, it's identified in the key as Johnson's baby powder.</p> <p>15 THE COURT: Okay.</p> <p>16 MS. PAGONIS: Your Honor, one last issue. Not on</p> <p>17 this exhibit. But Mr. Block showed Dr. Moline Plaintiff's</p> <p>18 Exhibit 44 and said this had been admitted into evidence.</p> <p>19 And that's actually not a correct statement. It was only</p> <p>20 admitted as to notice. I think that is very confusing to</p> <p>21 the jury to hear Mr. Block say that this has been admitted.</p> <p>22 And Ms. Moline testified, but no instruction was given,</p> <p>23 because you didn't remind us that it was, you know for</p> <p>24 purposes of notice only. That's the TV station testing that</p> <p>25 was --</p>
<p>Moline - Plaintiff - Direct (Mr. Block) Page 2208</p> <p>1 Dr. Moline, just like they did Dr. Webber. Do you remember?</p> <p>2 Dr. Webber, let's look at what she says in the article about</p> <p>3 you know all the different talcs she tested, and does it</p> <p>4 match up precisely with the key? And they could try to</p> <p>5 undermine that, your Honor, but this goes to the weight of</p> <p>6 the evidence. And the witness is going -- is taking this</p> <p>7 document at face value and just giving her medical opinion</p> <p>8 about asbestos in Johnson's baby powder.</p> <p>9 MR. KURLAND: It's a very specific thing. The key</p> <p>10 does not establish that Dr. Blount found asbestos in Sample</p> <p>11 I, which was Johnson's baby powder. The key, which is</p> <p>12 admitted, is what it is. And it is a key. And no one knows</p> <p>13 who made that key that says Sample I.</p> <p>14 THE COURT: How can you rephrase the question and</p> <p>15 still get your point, mostly?</p> <p>16 MR. BLOCK: I don't think -- your Honor, they are</p> <p>17 making a factual argument. You know, if they want to argue</p> <p>18 to the jury that, ladies and gentlemen, even though we</p> <p>19 produced this article with a key that identifies Johnson's</p> <p>20 baby powder as Sample I, it's not really Sample I. They</p> <p>21 could argue that, your Honor. If they want it to cross</p> <p>22 examine Dr. Moline on that, they could do that, your Honor.</p> <p>23 But we should not have to adopt their incredible, and it's</p> <p>24 not credible, position that Sample I is not what they say it</p> <p>25 is in the document they produced.</p>	<p>Page 2210</p> <p>1 MR. BLOCK: I think we are past that point. And if</p> <p>2 we want to take that up later, I think we can, but --</p> <p>3 THE COURT: Okay.</p> <p>4 MR. BLOCK: Thank you.</p> <p>5 (Continued on the next page.)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p>Direct-Moline-Block Page 2211</p> <p>1 THE COURT: Okay thank you. Please rephrase the 2 question. 3 Q Okay. Dr. Moline, when you were talking to the jury 4 about why asbestos is so dangerous, I believe one of the things 5 you talked about was how the asbestos fibers can get up in the 6 air, they're aerodynamic, can remain suspended, where they can 7 be breathed in and they can get down into and evade the defense 8 mechanics and into the lungs. Do you remember all that 9 testimony? 10 A Right. 11 Q So, what is the health significance of the finding of 12 needles and fibers of tremolite asbestos in Sample I in Dr. 13 Blount's article which is identified by the key attached by 14 Johnson & Johnson as identifying Sample I as Johnson Baby 15 Powder? What is the health significance of that? 16 A That these -- She identified fibers in the talcum 17 powder, needles and fibers is how she described it. And they 18 can be breathed in and make it into the lung, and some of them 19 will get into the pleural space, and that's where the 20 mesothelioma arises. 21 Q Thank you, Dr. Moline. Now, Dr. Moline, have you 22 reviewed materials relating to Donna Olson specifically in order 23 to render an expert opinion as to her diagnosis, the cause of 24 her disease, her medical treatment procedures that she's had and 25 also her prognosis?</p>	<p>Direct-Moline-Block Page 2213</p> <p>1 trials. Have you also given what's called depositions? 2 A Yes. 3 Q All right. Is a deposition when you go to a law office 4 or a conference room and there is a court reporter taking down 5 the questioning (gesturing) and the defendant gets to ask you 6 questions to find out what you're going to talk about in court? 7 A Yes. 8 Q And when you are requested to give a deposition, is 9 that something you have any choice over? 10 A No. 11 Q Okay. And have many companies taken your deposition 12 multiple times? 13 A Yes. 14 Q Has Johnson & Johnson taken your deposition on a number 15 of occasions? 16 A They have. 17 Q When do you do most of your medical/legal consulting 18 work in these cases? How do you fit that into your schedule? 19 A I do a lot of the work in the evenings or on weekends. 20 Recently I went with my family on vacation. They were off 21 skiing and I was doing work. So, that's how I fit it in to just 22 maximize the amount of time I have. 23 Q Okay. So, in terms of the materials that you reviewed 24 in this case, did you review deposition testimony? 25 A I did.</p>
<p>Direct-Moline-Block Page 2212</p> <p>1 A Yes. 2 Q And for the work that -- for the time that you're 3 putting into this case, are you or the hospital charging for 4 your time? 5 A Yes. 6 Q And what is the hourly rate? And how does it work as 7 between you and Northwell Hospital? 8 A So, the rate is \$600 an hour. The rate is the same 9 whether I'm reviewing or I'm in court. If I'm in court, the 10 money all goes to the hospital. Since they are paying my 11 salary, the money should go to them, since they would otherwise 12 be -- I would otherwise be at work. If it's work that I do on 13 my personal time, then I will bill for it separately. 14 Q And, Dr. Moline, have you testified in many trials in 15 cases on behalf of the plaintiff? 16 A Yes. 17 Q And how far back does that go? 18 A I started, it was somewhere around '96, '97 in a 19 handful of cases. And it's -- I've been doing it since then and 20 it ebbs and flows. 21 Q And have you ever been asked to testify for a defendant 22 in an asbestos case? 23 A I've been asked to review cases and evaluate 24 individuals, but the case never went to trial. 25 Q Okay. And in terms of you, said you testified at</p>	<p>Direct-Moline-Block Page 2214</p> <p>1 Q And I know that you have an expert report in this case, 2 and if you need to refer to that at any time, please feel free 3 to. And whose deposition testimony did you review in this case? 4 A I reviewed Ms. Olson's deposition transcript at the 5 time I wrote the report and I've also reviewed her husband's 6 deposition. 7 Q And have you reviewed medical records relating to Donna 8 Olson, including related to her mesothelioma? 9 A I have. 10 Q Have you reviewed answers to discovery where the 11 plaintiff has to give answers to certain questions? 12 A Yes. 13 Q Have you reviewed any other records such as social 14 security records that show employment history or anything like 15 that? 16 A I did. 17 Q And, Dr. Moline, do you have an opinion within a 18 reasonable degree of medical certainty as to the disease that 19 Donna Olson suffers from? 20 A Yes. 21 Q And what disease is that? 22 A Malignant mesothelioma. 23 Q And where -- what part of her body did Donna Olson 24 develop malignant mesothelioma in? 25 A In her pleura. In the right pleura to be specific.</p>

<p>Direct-Moline-Block Page 2215</p> <p>1 Q And did you review all of the materials, including Mr. 2 and Mrs. Olson's deposition testimony, to determine whether 3 Donna Olson had any exposures to asbestos? 4 A Yes. 5 Q And based upon your review of the materials in this 6 case, the medical records, the depositions and all the 7 materials, what information did you obtain about Donna Olson's 8 history of exposure to asbestos that she had starting from when 9 she was very young? 10 A Well, she -- her exposure to asbestos came from her use 11 of talcum powder. She knew her mother had used it on her when 12 she was a young girl, but she specifically remembered it 13 starting around age five and remembered that her mom would apply 14 the powder directly onto her chest and then rub -- and her body 15 and rubbed it in. And it was done after her mom gave her a 16 bath. And then at other times when it was warm out and she 17 would go out to play and she was hot, her mom would apply it 18 additional time. 19 Then Ms. Olson used it as she got older. When she was 20 around eight or nine she started using the powder herself and 21 applied it in a similar fashion, where she would put it in her 22 hands and put it onto her body, onto her chest and under her 23 arms. And she continued to use Johnson's Baby Powder in this 24 fashion after she bathed until around 1995, when she switched to 25 Shower to Shower.</p>	<p>Direct-Moline-Block Page 2217</p> <p>1 five and then when she started to use it herself, starting from 2 about the age of eight or nine, all the way up until 1995, was 3 that Johnson Baby Powder, the product? 4 A That's what she said. She said that was all she 5 recalled in her house. 6 Q And in terms of the use of this product on her by her 7 mother and the use of this product herself, up until 1995, the 8 use of Johnson Baby Powder, was that described by Mrs. Olson as 9 essentially a daily event, a daily practice? 10 A Yes. 11 Q Now, before we get to 1995, in 1991 did you learn from 12 the depositions that Donna Olson had a daughter? 13 A Yes. 14 Q And what did you find out about Donna Olson's use of 15 Johnson Baby Powder on her daughter? 16 A That she used the powder in the same fashion that her 17 mom had used it on her. That she would apply the baby powder 18 after she bathed her, until she was able to bathe herself, at 19 age eight or nine, just like Ms. Olson. 20 Q And did it indicate in Mrs. Olson's deposition that she 21 used the Johnson Baby Powder on her daughter until her daughter, 22 Kimberly, from the time Kimberly was born until the time 23 Kimberly was about eight years old? 24 A Yes. 25 Q So then in 1995 did you read about Donna Olson</p>
<p>Direct-Moline-Block Page 2216</p> <p>1 Q If I could just stop you there. Now in terms of 2 Mrs. Olson's exposure to asbestos, starting when she gave those 3 memories from starting at about age five, do you have an opinion 4 as to whether young children are more vulnerable when it comes 5 to the health effects of asbestos when a young child breathes in 6 asbestos? 7 A I do have an opinion. One of the factors is what young 8 children have also is a life in front of them. And so they have 9 a long latency period. So, one of the issues is that as they 10 become adults and middle aged and older, they will have had 11 decades from when they first were exposed. So that's an 12 additional risk factor, because they always will have the 13 opportunity to have that sufficient latency, in some cases it 14 could be very long. There is also concern that children may be 15 more susceptible to carcinogens at a younger age. Their cells 16 are rapidly developing. In fact, that's why there is often a 17 factor of ten, when in children's environmental health, sort of 18 standard practice is to lower whatever a permissible exposure, 19 although it's not used in that terminology for children, but a 20 level -- allowable level would be, you lower it by a factor of 21 ten when children are involved, because children may be more 22 susceptible plus they have a longer lifespan. 23 Q Okay. So, just to be clear, based upon your review of 24 the depositions in this case, was the product that you described 25 Donna Olson being exposed to starting from approximately age</p>	<p>Direct-Moline-Block Page 2218</p> <p>1 switching over to primarily Shower to Shower? 2 A Yes. 3 Q And what did you learn reading the deposition testimony 4 about Donna Olson's use of the Shower to Shower product starting 5 in 1995? 6 A That she used that regularly. Would apply it in the 7 same manner that she had used the Johnson Baby Powder. Put it 8 in her hand, applied it to her chest and to her underarms and 9 used it on a daily basis. 10 Q And did you read in Donna Olson's testimony about any 11 cleanup activities in terms of the powder that would accumulate 12 in the bathroom? 13 A Yes. 14 Q And what did you read about that that was significant 15 from an occupational-environmental medicine standpoint? 16 A She would basically clean the powder by putting it onto 17 the shower rug or the rug that was in the bathroom and then she 18 vacuumed that rug every other day. 19 Q And would that cause additional exposures to asbestos? 20 A Yes. 21 Q So, I'm hearing about vacuuming. It sounds like well, 22 you are removing it. But what does the published literature 23 tell you about the use of this regular vacuum on powdery 24 material that contains asbestos? 25 A That you shouldn't use a regular vacuum when you're</p>

<p>Direct-Moline-Block Page 2219</p> <p>1 removing asbestos, because the active vacuuming it and 2 disturbing it will actually not pick up although microscopic 3 fibers but instead will put them into the air and have 4 opportunity to be breathed in again. 5 Q Okay. And based upon your review of Mrs. Olson's 6 deposition testimony and her husband's deposition testimony did 7 you find that her use of the Johnson's Baby Powder and Shower to 8 Shower was substantially similar to the use of the product as 9 talked about in Johnson & Johnson own studies on their users 10 which talked about how the product users used the product and 11 the amount of powder typically used by consumers? 12 A Yes. 13 MS. PAGONIS: Objection. Leading. 14 THE COURT: Overruled. 15 Q Dr. Moline, do you have an opinion within a reasonable 16 degree of medical certainty as to whether Donna Olson's use of 17 Johnson's Baby Powder and Shower to Shower products and the use 18 of those products on her from the 1950s to the early 2000s 19 resulted in significant exposures to of asbestos to Donna Olson? 20 A Yes. 21 MS. PAGONIS: Objection, your Honor, based on the 22 argument we made yesterday. 23 THE COURT: Please tell me the argument. I didn't 24 hear you. 25 MS. PAGONIS: We made yesterday in our motion, just</p>	<p>Direct-Moline-Block Page 2221</p> <p>1 additional exposures from that activity. 2 Q All right. And we have talked about the Gordon, 3 Millette study and airborne exposure found there. And just in 4 terms of Donna Olson having this powder put onto her chest, that 5 contains thousands or millions of asbestos fibers per gram, what 6 is her use of that to you indicate when comparing her exposure 7 to the asbestos in the ambient air? 8 A Again, that it's orders of magnitude higher. It's -- 9 it's -- it's so much more significant than what her exposure 10 would be from background. 11 Q All right. How would you compare Donna Olson's level 12 of asbestos exposure from her use of Johnson's Baby Powder and 13 Shower to Shower products from the 1950s to the early 2000s, 14 including the use of Johnson's Baby Powder on her by her mother 15 and Donna Olson's use of that Baby Powder on her own child, how 16 would you compare that to the level of asbestos exposure of zero 17 0.1 fibers per cc, which is the OSHA PEL that you talked about 18 with the jury earlier? 19 A It's probably, using the Gordon numbers, it's 20 times 20 higher than the OSHA permissible exposure limit. 21 Q And do you base your opinion in that regard not only on 22 the Gordon study but your review of historical documents, 23 finding asbestos in the source talc used by Johnson & Johnson 24 for its products, historical documents, finding asbestos in the 25 Johnson Baby Powder, Shower to Shower products and the published</p>
<p>Direct-Moline-Block Page 2220</p> <p>1 reiterating that same objection for the record. 2 THE COURT: Yes. Overruled. 3 A Yes. I do have an opinion, and those exposures were 4 significant and capable of causing her mesothelioma. 5 Q All right. In terms of Donna Olson's exposure to 6 asbestos from the use of Johnson's Baby Powder and Shower to 7 Shower products, from her use of the products and the use of the 8 products on her and the use of the products on her own baby, 9 during the years of the 1950s to the early 2000s, how would you 10 compare the level of exposure that Donna Olson would have from 11 those products to the level of asbestos in the ambient air? 12 A It's -- it's like comparing a grape to a watermelon in 13 terms of they're both fruits, but one is very small and the 14 other can be very large. I'm thinking of a big watermelon. But 15 it's orders of magnitude higher. 16 Q When you say "orders of magnitude", that's a scientific 17 term. What does that mean? 18 A Well, if we take the urban ambient air level by the 19 government, ATSDR is a government agency, we know that what's 20 been measured by the government, whether it's MSHA or by other 21 scientists has been 10,000 times greater. So, that would be 22 orders of magnitude. It's four orders of magnitude more than 23 what is seen in the urban air. So, what we're seeing is levels 24 that are even higher than one would be regulated in the 25 workplace. And there is no protections against cleanup and</p>	<p>Direct-Moline-Block Page 2222</p> <p>1 literature as well? You base it on all those things, your 2 opinion that you've just given to the jury? 3 A Yes. 4 MS. PAGONIS: Leading. 5 THE COURT: Repeat the question. 6 (Whereupon the above-requested testimony was read 7 back.) 8 THE COURT: Sustained. 9 Q Okay. In terms of comparing Mrs. Olson's exposure to 10 asbestos from the use of the Johnson & Johnson products to the 11 OSHA PEL, what do you rely upon other than the Gordon article? 12 A There is historical documents dating back to the mid 13 50s, mid to late 50s, I think I remember '57, '58, that began to 14 measure the amount of asbestos in Johnson's -- Johnson & Johnson 15 products and other products that contain the Italian talc. 16 Other testing has been done by numerous different laboratories. 17 Some hired by the companies. Some done by independent 18 scientists at different organizations. People like Dr. Blount 19 who found tremolite in -- when she evaluated it for example. 20 Based on the MSHA findings. Based on the Rohl description of 21 billions of fibers when you have a percentage of .25 by bulk 22 weight. So those are some of the factors. Looking at the 23 historical documents that have been done on testing of the 24 product as well as the published literature up to Gordon in 2014 25 as well as other reports of testing that have been done.</p>

<p>Direct-Moline-Block Page 2223</p> <p>1 Q And are the levels of asbestos exposure that Donna 2 Olson had from Johnson's Baby Powder and Shower to Shower 3 products sufficient to cause her mesothelioma? 4 A Yes. 5 Q And do you base your opinion on the published 6 literature? 7 A I base my opinion on the published literature. The 8 concept here is she was exposed to asbestos that was contained 9 within the product. So, you look at the published literature 10 and see how many folks have developed mesothelioma at levels and 11 regardless of what the product might be, and that level is 12 sufficient to cause mesothelioma. 13 Q And was Donna Olson's exposure to asbestos from Johnson 14 & Johnson talcum powder products a long-term, frequent exposure 15 that she had over many years? 16 A Yes. She used it daily. We could add up how many 17 times she did it by multiplying the number of days in the year 18 by the number of years she used the powder, and it's going to be 19 well over 20,000 if we think about using it every day from when 20 she was five to up until let's say the year 2000 it's going to 21 be 20,000 times or more that she used it. So, that's regular 22 and frequent. And she used it on a daily or sometimes more than 23 daily basis, both on herself and on her child. So when she was 24 applying it to herself, then she also was applying it to her 25 child. So, during the years that she was applying to her</p>	<p>Direct-Moline-Block Page 2225</p> <p>1 A No. You -- I've looked at her work history. She 2 actually worked in a dentist office. Of course I was interested 3 in what she did, since I had written a paper about dental tape. 4 She was a receptionist. She had nothing to do with the 5 formulation of crowns and did not use dental tape. Then she 6 worked for CBS Television and was a systems analyst and had no 7 exposure to asbestos in the workplace. And then when she had 8 her daughter, she chose to stay home with her daughter. So was 9 not in the workplace after 1991. 10 Q Have you reviewed Dr. Longo's study by his lab, 11 Material Analytical Services, which is called the Below the 12 Waist Study, where they took a container of Johnson's Baby 13 Powder that the lab had tested and found asbestos, and they 14 simulated the use of it below the waist of a person? 15 A Yes, I have. 16 Q And what is the significance of the fact that Donna 17 Olson used Johnson's Baby Powder and Shower to Shower above her 18 waist, whereas Dr. Longo with Material Analytical Services did 19 the testing with a person using it below the waist? 20 A I mean, it's a matter of a couple feet, but it's closer 21 to your -- where you breathe, where Mrs. Olson was applying it 22 to her upper body and not below the waist. So, Dr. Longo found 23 an average of 2.57 fibers per cc even when he was measuring 24 individuals who were applying powder lower down on their body. 25 Mrs. Olson was applying it higher up. So it would have been</p>
<p>Direct-Moline-Block Page 2224</p> <p>1 daughter she, was applying powder twice a day at least. 2 Q And when you talked about the Helsinki consensus report 3 earlier to the jury, you talked about a brief or low level 4 exposure asbestos being sufficient as published in that 5 consensus report, how do you apply that when looking at Donna 6 Olson's long-term exposure to asbestos from Johnson & Johnson 7 talcum powder products? 8 A Well, it was -- Each incident might be for a short 9 period of time when she's actually applying it, but it still 10 stays in the air. So, it's not just the actual minute or two 11 minutes that it took to apply the powder. It still remains in 12 the air. Then she had additional exposure from cleaning it up. 13 But I wouldn't consider decades to be a brief exposure. 14 With respect to whether it's low level, as an episode, 15 that's not low level exposure, given the numbers that we have 16 seen before. They're levels that are capable of causing 17 disease. So, she has more than a low or brief level of 18 exposure. 19 Q The jury will hear Mrs. Olson's testimony. Did you 20 hear a lot of questions asked of Mrs. Olson about other possible 21 exposures to asbestos? 22 A Yes. 23 Q And having reviewed Mrs. Olson's deposition testimony 24 in detail, did you identify any other possible exposures from 25 asbestos products that she could have had?</p>	<p>Direct-Moline-Block Page 2226</p> <p>1 closer to her breathing zone. 2 Q And do you find, based upon your review of the Gordon, 3 Millette study and the Material Analytical Services study on the 4 below the waist use of the product, do you find that these 5 results are consistent in terms of the release of asbestos in 6 the air from the use of talcum powder products that contain 7 asbestos? 8 A Yes. 9 Q Now, I want you to assume that the jury heard that the 10 container that Dr. Longo used in this below the waist study had 11 15.1 million asbestos fibers per gram, okay. 12 A Okay. 13 Q So, if the container contained ten times less asbestos 14 than that, would there still be a significant exposure? 15 A Yes. 16 Q If the container contained a hundred times asbestos 17 than that, would there still be significant exposure? 18 A Yes. 19 Q And even a thousand times less asbestos in a container, 20 would that still be a significant exposure above normal 21 background levels found in the urban air? 22 A It would be. 23 Q Dr. Moline, I would like you to assume that Dr. Longo 24 testified in this case that when Donna Olson applied Johnson's 25 Baby Powder and Shower to Shower, that he calculated that she</p>

<p>Direct-Moline-Block Page 2227</p> <p>1 had about 21,000 applications on herself over the course of her 2 life. Is that consistent with what you read in her deposition 3 testimony? 4 A Yes. 5 Q And I want you to assume that Dr. Longo testified that 6 when Donna Olson applied Johnson's Baby Powder and Shower to 7 Shower, that over -- that on over 50 percent of those occasions 8 she would have been exposed to asbestos at the level of 9 approximately 0.1 fibers per cc to one fiber per cc. Is that 10 level of exposure, based upon your review of Donna Olson's use 11 of the product, sufficient to have caused Mrs. Olson's 12 mesothelioma? 13 A Yes. 14 Q And you base that opinion on the published literature, 15 the historical documents and the other sources that you 16 supported your opinions with regard to the cause of Mrs. Olson's 17 mesothelioma? 18 A Yes. 19 Q Dr. Moline, have you ruled out other potential causes 20 of mesothelioma however rare they may be? 21 A Well, virtually, as we said, virtually all cases in the 22 United States of mesothelioma are from asbestos. There is some 23 individuals, there is -- are being evaluated who have had 24 therapeutic radiation, meaning they had treatment for cancers 25 and received radiation. Then decades later mesotheliomas can</p>	<p>Direct-Moline-Block Page 2229</p> <p>1 A Yes. 2 Q And I want you to assume that Mr. Olson will testify in 3 this case that the dates on those products that they found, that 4 it says on the products one is 2004, one is 2009 and the other 5 is 2013. So, let me start with the products that are dated 2009 6 and 2013. Are products from that date in your opinion ones that 7 would be important to look at in terms of assessing Mrs. Olson's 8 the cause of her mesothelioma? 9 A No. 10 Q Why not? 11 A As we talked about it yesterday, there is a latency 12 period. So, you don't get disease right after you've had the 13 exposure. It can take minimum of let's say ten or 11 years, but 14 typically longer. So, any exposure she had less than ten years 15 ago would not be relevant to her current disease. 16 Q All right. And in terms of the one dated 2004, it says 17 2004 on the container. Assuming there is no testimony about 18 when that container was used or are you able to assess the 19 importance of -- of whether any talc used from that container 20 would have been important or would have been relevant from a 21 causation perspective in this case enlight of the latency 22 period? 23 A It's right on the cusp. She developed symptoms in 24 2016. Don't know when she actually started using, if she even 25 used that container. So, it's right on the cusp. I don't think</p>
<p>Direct-Moline-Block Page 2228</p> <p>1 arise in the area that had been radiated. Mrs. Olson never had 2 radiation treatments. She did not have a cancer before that. 3 So, I ruled that out. She had no occupational exposure. Her 4 husband worked at the time that they were knew each other he 5 also worked at CBS and then he worked in IT. So, he did not 6 have any occupational exposure. I don't recall that her family, 7 her parents had jobs that would have exposed her. And there was 8 no other information that I was provided with to show that she 9 had -- that she had traveled to Montana where there is asbestos 10 in a particular community in Montana. She hadn't traveled to 11 Turkey, where there is a type of fiber that's been associated 12 with mesothelioma. So, there is no other information of any 13 other exposure apart from the talcum powder. 14 Q Did you read deposition testimony that after the Olsons 15 found out in 2015 -- Strike that. Did you read deposition 16 testimony that the Olsons saw something on TV in 2015 that talc 17 could cause cancer and that Mrs. Olson in 2015 promptly stopped 18 using talcum powder products? 19 A Yes. 20 Q Did you read that they went around the house and tried 21 to locate all the talcum powder products and throw them away? 22 A Yes. 23 Q Did you also read that Mr. Olson went back during the 24 time this case was going on and he ended up finding three 25 products that were stored in some closets?</p>	<p>Direct-Moline-Block Page 2230</p> <p>1 it would be very important with respect to her disease, because 2 mostly because of the latency period. 3 Q Were Donna Olson's exposure -- Strike that. Were Donna 4 Olson's exposure to asbestos to Johnson & Johnson talcum powder 5 products prior to 2004 sufficient to cause her mesothelioma? 6 A Yes. 7 Q Dr. Moline, are you familiar with the analysis of lung 8 tissue in certain cases where you could look at someone's lung 9 tissue and see whether there is talc or asbestos in the lung 10 tissue? 11 A Yes. 12 Q And you talked about the Helsinki consensus report, and 13 based upon that consensus report and based upon your experience 14 and the review of the published literature, you need a lung 15 tissue analysis of Donna Olson in order to come to your opinion 16 that her exposure to asbestos from Johnson & Johnson talcum 17 powder products caused her mesothelioma? 18 A No. 19 Q Is that one of the consensus statements from the 20 Helsinki consensus group, that you do not need a lung tissue 21 analysis in order to attribute a mesothelioma to asbestos? 22 A Yes. They say you don't need it. They talk about if 23 you have it, it's helpful or can be informative, but it is 24 certainly not a requirement for attribution or causation. 25 Q All right. We'll see more about this when we look at</p>

<p>Direct-Moline-Block Page 2231</p> <p>1 some medical records this afternoon. Did Donna Olson have a 2 procedure called a talc pleurodesis after she developed 3 mesothelioma that would pose a problem in looking at her lung 4 tissue? 5 A Yes. It would -- The talc pleurodesis is done in 6 people with malignant conditions nowadays. Typically it's only 7 used in malignant or terminal conditions to prevent fluid from 8 developing. It's for symptom relief. 9 The installation of talc in the pleural cavity is going 10 to contaminate the field, so that any sample you're going to be 11 analyzing is going to in all likelihood have talc related to the 12 installation of the talc that's been placed in there for medical 13 purpose. 14 Q All right. So, in sum, if someone was to take Donna 15 Olson's lung tissue and analyze it -- 16 THE COURT: I apologize. Why don't you finish your 17 question. 18 Q In sum, if someone were to take Donna Olson's lung 19 tissue and analyze it for talc and asbestos, would it be really 20 impossible to determine whether any findings were from the 21 talcum powder she used or from the talc they put in her as part 22 of that talc pleurodesis procedure after she developed 23 mesothelioma? 24 A I have no idea how they would be able to separate out 25 which is which. The results would not be valid.</p>	<p>Moline - Plaintiff - Direct (Mr. Block) Page 2233</p> <p>1 * * * * * 2 A F T E R N O O N S E S S I O N 3 * * * * * 4 THE COURT: Doctor, if you would like to come up, 5 you may. 6 (Whereupon, the witness stepped into the witness 7 stand.) 8 THE COURT OFFICER: All rise. Jury entering. 9 (Whereupon, the jurors entered the courtroom and 10 were properly seated in the jury box.) 11 THE COURT: Good afternoon, everyone. Please be 12 seated. 13 Whenever you are ready. 14 MR. BLOCK: Thank you, your Honor. 15 Q Dr. Moline, the jury has been told that Donna Olson 16 lives in Delaware. Were you able to meet with her personally? 17 A I was not. 18 Q Did her detailed deposition testimony and the 19 deposition of her husband, along with the medical records and 20 the other case specific materials you reviewed, did that give 21 you sufficient information to give the opinions that you've 22 given here today for the jury? 23 A Yes. 24 Q And were you able to gain the type of detail about her 25 exposure history that you would have asked if you would have met</p>
<p>Page 2232</p> <p>1 Q All right. 2 MR. BLOCK: Thank you for letting me finish that 3 question, your Honor. 4 THE COURT: Of course. Let us resume at 2:15. 5 Thank you so much. 6 COURT OFFICER: All rise. Jury exiting. 7 (Whereupon the jury panel departed the courtroom.) 8 (Whereupon a luncheon recess was taken.) 9 (Continue on the next page.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>Moline - Plaintiff - Direct (Mr. Block) Page 2234</p> <p>1 with her personally? 2 A Probably I would have asked questions slightly 3 different because I come at -- from a medical, not a legal 4 perspective. But there were certainly many detailed questions 5 in her deposition that allowed me to get a sense of how often 6 she used it, where she used it, and factors that were important 7 to assess her exposure. 8 Q Dr. Moline, if a person has -- strike that. 9 If a person has repeatedly had significant exposures to 10 asbestos within the known latency period for mesothelioma, and 11 develops mesothelioma, is that case of mesothelioma spontaneous? 12 A No. 13 Q And can you explain that opinion to the jury? 14 A Mesothelioma, as we talked about, was a signal tumor 15 for asbestos exposure. So when someone presents with 16 mesothelioma, the thing one looks for is whether someone had 17 asbestos exposure. 18 When somebody has information about asbestos exposure, 19 particularly someone who has had exposure, or it doesn't even 20 have to be over decades, but in this particular case it was 21 exposure over decades, on a daily basis, then they had exposure 22 to asbestos. So it's not -- you would say it's related to 23 asbestos exposure. And you wouldn't use such terminology such 24 as spontaneous. You would say it was a mesothelioma caused by 25 asbestos exposure.</p>

<p>Moline - Plaintiff - Direct (Mr. Block) Page 2235</p> <p>1 Q And have you ever seen any peer-reviewed literature</p> <p>2 where cases of mesothelioma were documented and it was</p> <p>3 documented that the people who developed mesothelioma had</p> <p>4 significant and ongoing asbestos exposure, and the authors of</p> <p>5 the publication said that these mesotheliomas just occurred</p> <p>6 spontaneously?</p> <p>7 A No.</p> <p>8 Q Have there been studies that have categorized a certain</p> <p>9 percentage of mesothelioma cases as one in which no asbestos</p> <p>10 exposures were identified based upon the questions that were</p> <p>11 asked or the criteria that was used for that particular study?</p> <p>12 A Yes.</p> <p>13 Q And can you give us an example so we could understand,</p> <p>14 of a study in the peer-reviewed literature where they are</p> <p>15 looking at people who develop mesothelioma and they are</p> <p>16 categorizing them as having asbestos exposure, or not having</p> <p>17 asbestos exposure, in terms of what they look at and what sort</p> <p>18 of criteria is used?</p> <p>19 A There have been studies that look, trying to assess</p> <p>20 whether someone has worked in an occupation that is known to</p> <p>21 have had asbestos exposure, and that is typically the type of</p> <p>22 studies that have been done where they focus more on jobs where</p> <p>23 there was asbestos exposure. And then they might say, did you</p> <p>24 fit into one of these categories, um, and ask them, or ask the</p> <p>25 individuals with mesothelioma. Often they are asking family</p>	<p>Moline - Plaintiff - Direct (Mr. Block) Page 2237</p> <p>1 exposure. I believe they asked about -- in some individuals</p> <p>2 they asked about a para-occupational exposure.</p> <p>3 Q What do you mean by that?</p> <p>4 A Did they have a hobby, a home remodeling -- I don't</p> <p>5 believe -- actually, they didn't talk about construction.</p> <p>6 Q Okay.</p> <p>7 A They only talked about demolition. She didn't talk</p> <p>8 about people building. They only talked about people tearing</p> <p>9 down. And we know from the published literature that there are</p> <p>10 hundreds of studies of individuals who build things who had</p> <p>11 asbestos exposure from building with asbestos-containing</p> <p>12 materials.</p> <p>13 Q And you say some of the people questioned, instead of</p> <p>14 -- some or all of the people questioned, were they the person</p> <p>15 with the mesothelioma or were they what are called next of kin,</p> <p>16 like family members?</p> <p>17 A So because mesothelioma is a fatal disease, by the time</p> <p>18 they had -- many of the cases are -- some of them had passed on</p> <p>19 and weren't able to complete the questionnaire. So I believe</p> <p>20 over 50 or 55 percent of the folks they had to ask next of kin.</p> <p>21 And next of kin could be spouse, it could be child, it could be</p> <p>22 sibling, it could be friend, and asked them if they knew the</p> <p>23 individual had worked in any of these job categories or may have</p> <p>24 had any other exposure. But they didn't ask about household</p> <p>25 exposures.</p>
<p>Moline - Plaintiff - Direct (Mr. Block) Page 2236</p> <p>1 members, which is a whole other issue, because family members</p> <p>2 might not have known what folk did, especially the children</p> <p>3 won't know what their parents did before they were born. Um,</p> <p>4 and the spouses often won't know the full extent of what</p> <p>5 somebody did in their workplace or whether they had exposure.</p> <p>6 So there are studies in the literature that have used</p> <p>7 categorizations of jobs that have been associated with asbestos</p> <p>8 exposure, and then asked questions that go from there, haven't</p> <p>9 delved into household exposures with any specificity.</p> <p>10 Q So I want to ask you about a study that I think the</p> <p>11 jury may hear about in the defense case, or maybe on cross</p> <p>12 examination.</p> <p>13 Are you familiar with a Spirtas study from 1994?</p> <p>14 A Yes.</p> <p>15 Q Did that study -- how did that study go about</p> <p>16 categorizing the people with mesothelioma as being asbestos</p> <p>17 exposed versus not asbestos exposed. Do you recall?</p> <p>18 A This is the type of study I was talking about. They</p> <p>19 used eight or -- eight to ten job categories, or industries,</p> <p>20 where asbestos was known to be used in the workplace. And they</p> <p>21 asked if either the individual, that they were alive, or the</p> <p>22 people did have mesothelioma, had worked in that job, or in</p> <p>23 those job categories. They developed something called a job</p> <p>24 exposure matrix where they assigned, whether it was high</p> <p>25 probability, medium or low probability, that they had asbestos</p>	<p>Moline - Plaintiff - Direct (Mr. Block) Page 2238</p> <p>1 Q So in terms of the hundreds or thousands of</p> <p>2 asbestos-containing products that were manufactured, for</p> <p>3 example, was there questions about a product called joint</p> <p>4 compound in terms of the people in the study?</p> <p>5 A No.</p> <p>6 Q And is joint compound a product that some of the jurors</p> <p>7 might be familiar with, where if you are putting drywall</p> <p>8 together, it goes in the joints of the drywall. You'll apply</p> <p>9 it, sand it down before you paint. Is that joint compound?</p> <p>10 A Yeah. Sometimes people call it Spackle, to fill in</p> <p>11 holes.</p> <p>12 Q And has joint compound been banned -- has joint</p> <p>13 compound with asbestos been banned in the United States since</p> <p>14 1978?</p> <p>15 A Yes.</p> <p>16 Q All right.</p> <p>17 So in a study like the Spirtas study, do we have any</p> <p>18 information about products like joint compound -- let's say</p> <p>19 dental tape. You talked about an article you published in the</p> <p>20 peer-reviewed literature about dental tape. Was that product,</p> <p>21 or a lot of other products that had asbestos in them, asked</p> <p>22 about in the study?</p> <p>23 A No.</p> <p>24 Q Okay.</p> <p>25 Did the Spirtas study ask about the use of talcum</p>

<p>Moline - Plaintiff - Direct (Mr. Block) Page 2239</p> <p>1 powder products?</p> <p>2 A No.</p> <p>3 Q So when the Spirtas study says -- does the Spirtas</p> <p>4 study say that they only identified asbestos exposure based upon</p> <p>5 the job categories they asked about, and based upon what they</p> <p>6 did ask about, but they only identified that for 20 percent of</p> <p>7 the women?</p> <p>8 MS. PAGONIS: Objection. Leading.</p> <p>9 THE COURT: Sustained.</p> <p>10 Q What did the Spirtas study say about women in terms of</p> <p>11 the answers to the information that they were asking about in</p> <p>12 terms of asbestos?</p> <p>13 A Well, they acknowledged that very few women fit into</p> <p>14 these occupational categories that they used, because</p> <p>15 historically women weren't in many of those trades.</p> <p>16 But with respect to household exposure, they found that</p> <p>17 only 20 percent of the women fit into the job categories, or the</p> <p>18 exposure categories that they were using in the study.</p> <p>19 Q So, did you say 20 percent?</p> <p>20 A Yes.</p> <p>21 Q And so, does this study mean that 80 percent of women</p> <p>22 have spontaneous mesothelioma?</p> <p>23 A No. It means in this study they only had information</p> <p>24 about a limited number of asbestos-containing products. And</p> <p>25 they never asked whether women had exposure to other sources of</p>	<p>Moline - Plaintiff - Direct (Mr. Block) Page 2241</p> <p>1 Ms. Olson did not report any known exposures to asbestos, is</p> <p>2 that unusual in your experience in terms of whether patients</p> <p>3 would know that talcum powders contain asbestos?</p> <p>4 A No, that is not unusual at all. Patients don't know</p> <p>5 that there was asbestos in talcum powder. So when they are</p> <p>6 asked, do you know of any asbestos exposure, they would say, no.</p> <p>7 Q Have you considered epidemiology -- let me ask you,</p> <p>8 first. Has there been an epidemiology study specifically on the</p> <p>9 users of cosmetic talcum powder products?</p> <p>10 So I'm asking about a study where you look at regular</p> <p>11 users of talcum powder products and you compare their health</p> <p>12 outcomes for the disease, mesothelioma, with people who did not</p> <p>13 regularly use talcum powder products?</p> <p>14 A No.</p> <p>15 Q And to your knowledge, has Johnson & Johnson ever done</p> <p>16 that study?</p> <p>17 A No.</p> <p>18 Q So if there's not been a study looking at the disease,</p> <p>19 mesothelioma, on people who use talcum powder products versus</p> <p>20 people that did not, how are you still able to conclude that</p> <p>21 Donna Olson's mesothelioma was caused by asbestos exposure from</p> <p>22 her use of talcum powder products?</p> <p>23 A In the same way that I'm able to conclude that patients</p> <p>24 who have been exposed to asbestos from various sources from</p> <p>25 which there wasn't an epidemiologic study of the end users</p>
<p>Moline - Plaintiff - Direct (Mr. Block) Page 2240</p> <p>1 asbestos, such as contaminated talcum powder, to be able to</p> <p>2 answer that question.</p> <p>3 Q And are there many other studies that have categorized</p> <p>4 certain people in the study with mesothelioma as asbestos</p> <p>5 exposed versus non-asbestos exposed, that also did not ask about</p> <p>6 talcum powder when asking about asbestos?</p> <p>7 A Yes. The vast majority of scientific literature does</p> <p>8 not ask about the use of talcum powder.</p> <p>9 Q And based upon your experience in the area of</p> <p>10 occupational and environmental medicine, and in communicating</p> <p>11 with treating physicians and clinicians who see patients on a</p> <p>12 regular basis, has there been awareness in the medical community</p> <p>13 about asbestos in talcum powders?</p> <p>14 A When I talked to my colleagues, they weren't aware that</p> <p>15 asbestos was in talcum powder. I was actually -- I've given</p> <p>16 talks about this to my colleagues in other departments that were</p> <p>17 unaware of it. So it's just not widely -- widely known in the</p> <p>18 medical community. And --</p> <p>19 Q So when the jury hears evidence in this case that</p> <p>20 Ms. Olson's treating physicians did not ask her about her talcum</p> <p>21 powder use when asking about asbestos, does that surprise you,</p> <p>22 based upon your experience?</p> <p>23 A No. In fact, it's more -- it's the norm. Rather, most</p> <p>24 clinicians don't ask about whether someone used talcum powder.</p> <p>25 Q And when the jury sees medical records indicating that</p>	<p>Moline - Plaintiff - Direct (Mr. Block) Page 2242</p> <p>1 develop mesothelioma, and by looking at whether they had</p> <p>2 exposure to asbestos, looking at levels that have been measured</p> <p>3 and are reported in the literature and in testing, saying was</p> <p>4 there asbestos there? Looking to see how often they used it.</p> <p>5 What kind of exposure they had? How many years did they use it?</p> <p>6 How many years ago did they start using it? Is there sufficient</p> <p>7 latency?</p> <p>8 It's -- you -- I'm treating it as an</p> <p>9 asbestos-containing product in the same way that I would</p> <p>10 consider whether a patient coming to see me who had asbestos</p> <p>11 exposure from using burlap bags that contained asbestos, had</p> <p>12 asbestos-related disease.</p> <p>13 There is no study that I'm aware of burlap bag handlers</p> <p>14 with asbestos-related diseases, yet this individual had one.</p> <p>15 And he could describe that the bags contained asbestos.</p> <p>16 Q Okay.</p> <p>17 And similarly, you told the jury about how you</p> <p>18 published a study on dentists that developed mesothelioma from</p> <p>19 dental tape use, even though there was not a study of the people</p> <p>20 who made the dental tape or a study of dentists comparing</p> <p>21 dentists who use dental tape compared to others who did not, but</p> <p>22 you were still able to draw that conclusion and publish that in</p> <p>23 the peer-reviewed literature?</p> <p>24 A Correct.</p> <p>25 Q Have you considered epidemiology studies, or any study</p>

<p>Moline - Plaintiff - Direct (Mr. Block) Page 2243</p> <p>1 on the miners and millers of Vermont talc?</p> <p>2 A I have seen -- I'm only aware of one study on Vermont</p> <p>3 miners and millers. There's another study that talks about</p> <p>4 somebody who was a talc man, but I have reviewed a study --</p> <p>5 MS. PAGONIS: Your Honor, we have a motion with</p> <p>6 respect to that. We move to strike.</p> <p>7 THE COURT: I didn't hear you.</p> <p>8 MS. PAGONIS: We have a motion with respect to --</p> <p>9 may I approach, your Honor?</p> <p>10 MR. BLOCK: I disagree with striking any testimony</p> <p>11 there, your Honor, and I could lay a foundation.</p> <p>12 THE COURT: I have to know with the objection is.</p> <p>13 (Whereupon, there is a brief pause in the</p> <p>14 testimony.)</p> <p>15 THE COURT: Yes. Let's go to the back.</p> <p>16 (Whereupon, the following takes place on the record</p> <p>17 in the robing room among the Court and all Counsel.</p> <p>18 THE COURT: This is the Lamm thing?</p> <p>19 MS. PAGONIS: So the question was whether she was</p> <p>20 aware of any epidemiology study in Vermont, and then she</p> <p>21 answered with the Lamm study, which is not an epidemiology</p> <p>22 study. So I didn't object with the question, but I am</p> <p>23 objecting to strike her response, because it's subject to a</p> <p>24 pending motion in limine, the Lamm study that your Honor</p> <p>25 has.</p>	<p>Moline - Plaintiff - Direct (Mr. Block) Page 2245</p> <p>1 pneumonia -- excuse me, as for other respiratory system</p> <p>2 deaths, influenza or pneumonia caused the death of one New</p> <p>3 York State talc worker, but no Vermont talc miner or miller.</p> <p>4 Mesothelioma caused the death of one New York State talc</p> <p>5 man, parenthetical, 15 years after hire, which followed 28</p> <p>6 years in mining and construction, and of one Vermont talc</p> <p>7 man."</p> <p>8 So let's not take this statement of Vermont talc</p> <p>9 man in isolation. They are talking about a cohort of people</p> <p>10 that worked in the Vermont talc industry for at least one</p> <p>11 year. One of those people in the cohort was found to have</p> <p>12 mesothelioma. So anyone who says, which they said in</p> <p>13 opening, that no one has gotten mesothelioma who worked in</p> <p>14 the Vermont talc industry, is mistaken and wrong. And this</p> <p>15 is something that an expert would reasonably consider and</p> <p>16 discuss in evaluating people who work with Vermont talc.</p> <p>17 And so, I don't see the basis for excluding this or</p> <p>18 striking any testimony that's been given so far.</p> <p>19 MS. PAGONIS: Your Honor, this Lamm --</p> <p>20 THE COURT: Just off the record for one second.</p> <p>21 (Whereupon, there is a discussion held off the</p> <p>22 record among the Court and all Counsel.)</p> <p>23 THE COURT: Back on the record.</p> <p>24 MR. KURLAND: The un-sourced, unattributed</p> <p>25 observation that there's this one Vermont talc man with</p>
<p>Moline - Plaintiff - Direct (Mr. Block) Page 2244</p> <p>1 MR. BLOCK: She's prepared to talk about Vermont</p> <p>2 talc workers. She's going to talk about a study that had, I</p> <p>3 think, 300 or 400 workers, who were looked at. She'll talk</p> <p>4 about the deficiencies of that study in terms of being a</p> <p>5 small group, et cetera.</p> <p>6 She also will add, and I will elicit the</p> <p>7 questioning, that there has been a Vermont talc worker that</p> <p>8 has been identified as having mesothelioma.</p> <p>9 And if you look at this article, your Honor, it's</p> <p>10 the Lamm article. Directing your attention to the second</p> <p>11 column of the first page, first full paragraph, you see</p> <p>12 where it says "The cohort of white male employees" --</p> <p>13 THE COURT: Yes.</p> <p>14 MR. BLOCK: -- "of the Vermont talc industry was</p> <p>15 developed from the records of the Vermont State Health</p> <p>16 Department's annual radiographic survey of employees." And</p> <p>17 then it talked, lower in the sentence, about the Vermont</p> <p>18 talc study cohort as "all white males in the Vermont talc</p> <p>19 industry on or after January 1st, 1940 with at least one</p> <p>20 year of talc employment prior to January 1st, 1970." So</p> <p>21 they describe the cohort of Vermont talc workers that they</p> <p>22 are talking about.</p> <p>23 Then on page -- the next page, which is page 1577</p> <p>24 of the article, it says, second paragraph, second column,</p> <p>25 "As for other respiratory system deaths, influenza or</p>	<p>Moline - Plaintiff - Direct (Mr. Block) Page 2246</p> <p>1 mesothelioma is -- we know nothing about that. And there's</p> <p>2 no attribution for that. It was laid out yesterday, and</p> <p>3 it's similar to that one isolated Workers' Comp. claim.</p> <p>4 These things were all sort of argued together, but this --</p> <p>5 THE COURT: So how do we --</p> <p>6 MR. KURLAND: -- it's hearsay.</p> <p>7 MR. BLOCK: Your Honor, this document is published</p> <p>8 in the peer-reviewed literature. It's from a Dr. Lamm,</p> <p>9 Consultants in Epidemiology and Occupational Health from</p> <p>10 Washington, D.C., and this is about the risks for malignant</p> <p>11 and nonmalignant respiratory deaths of New York State and</p> <p>12 Vermont State talc workers. It says it right in the start</p> <p>13 of the abstract on the first page, your Honor.</p> <p>14 And he finds that one person died of mesothelioma</p> <p>15 who was a Vermont talc worker, in a cohort -- in a cohort</p> <p>16 that is defined. And I already read it into the record.</p> <p>17 It's defined in page one, paragraph two, second column.</p> <p>18 So they told the jury that no person who worked</p> <p>19 with Vermont talc, none of the miners and millers had ever</p> <p>20 gotten mesothelioma. Here we have a defined cohort of</p> <p>21 Vermont talc workers and we have one of the Vermont talc</p> <p>22 workers being identified as having mesothelioma.</p> <p>23 And if they want to cross examine and say, well,</p> <p>24 Dr. Moline, it does, you know, define a cohort. And, you</p> <p>25 know, but it doesn't say what that particular talc worker</p>

<p>Moline - Plaintiff - Direct (Mr. Block) Page 2247</p> <p>1 did in the Vermont mines, and they might raise other issues. 2 We don't know what else he did when he wasn't working in the 3 Vermont talc mines, but it goes to the weight of the 4 evidence. And we think this is certainly proper for the 5 witness to discuss, particularly when one of the defenses in 6 this case is that the people mining and milling talc never 7 get mesothelioma. 8 MR. KURLAND: Your Honor, first of all, this is 9 hearsay. It is an out-of-court statement that plaintiffs 10 are seeking to admit for its truth. They are seeking to 11 admit the truth of the statement that one, quote, Vermont 12 talc man was found to have mesothelioma. They are seeking 13 to offer this for no other purpose except to establish the 14 truth of that statement. And to that purpose, it is 15 inadmissible hearsay. It is irrelevant that it may have 16 been published in the peer-reviewed literature. 17 Moreover, there is no indication here that this was 18 ever published in the peer-reviewed literature. It has 19 authors. It doesn't say whether it was published. And our 20 understanding of this is that it was presented at a 21 conference as part of a poster presentation. It was not 22 subject to peer review. 23 But even if it were subjected to peer review, you 24 can't admit a study in New York for the -- for its truth. I 25 mean, it is hearsay. And they are trying to admit an</p>	<p>Moline - Plaintiff - Direct (Mr. Block) Page 2249</p> <p>1 peer-reviewed literature is that in the epidemiological 2 studies, the studies themselves, there has -- there is not a 3 report of a miner or a Miller developing mesothelioma. In 4 the peer-reviewed literature epidemiological studies. 5 That's not an epidemiological study. So that is the 6 distinction that we are making here. And I have not said to 7 the jury -- we have not said to the jury that there is 8 nothing out there that says that someone may have developed 9 mesothelioma in association with mining. 10 There is another issue with regard to a random 11 miner in Italy, but that person is not part of the study 12 because the person didn't meet the study criteria, for 13 reasons that will be explained. 14 Our statement has been very clear, that if you look 15 at the scope of the epi data, that is the epidemiological 16 studies that are in the peer-reviewed literature, there are 17 a large number of patient years, over 60,000 patient years, 18 and within those studies there is not a case of 19 mesothelioma. 20 MR. BLOCK: Your Honor -- 21 MR. BROCK: This is not peer-reviewed literature. 22 MR. BLOCK: Your Honor, this is a published study, 23 and I will lay the foundation for it. And it's -- it is an 24 epidemiological -- 25 THE COURT: Where was it published?</p>
<p>Moline - Plaintiff - Direct (Mr. Block) Page 2248</p> <p>1 isolated fact from the study. This is an out-of-court 2 statement that they seek to admit for its truth, and that is 3 an improper purpose. 4 MR. BLOCK: And, your Honor, if that's the standard 5 and their witnesses aren't going to talk about the absence 6 of mesotheliomas in Vermont and Italian talc miners and 7 millers, then I guess it all could be excluded from the 8 case, but I don't think that's the case. I think their 9 witnesses are going to give expert opinions about whether 10 there have been cases of mesothelioma among these talc 11 miners and millers. 12 My expert is entitled to rely upon materials that 13 she considers reliable and that she would ordinarily rely 14 upon in her profession, environmental and occupational 15 medicine. And the jury will have to, you know, weigh the 16 relevance of the miners and millers experience. And this is 17 part of the data that both experts are -- that all the 18 experts are aware of and discuss in these cases. 19 (Whereupon, there is a brief pause in the 20 proceedings.) 21 THE COURT: What about plaintiff's argument that it 22 responds to defendant's statement that no one dies from 23 this. 24 MR. BROCK: I didn't bring my reading glasses, but, 25 your Honor, the defendant's statement with regard to the</p>	<p>Moline - Plaintiff - Direct (Mr. Block) Page 2250</p> <p>1 MR. BLOCK: It says "epidemiology" at the top, your 2 Honor. And that's not the standard. The standard is 3 whether it's the type of material that would ordinarily and 4 reasonably be relied upon by an expert who is investigating 5 the issue and forming their expert opinions. 6 Here, how can an expert overlook the fact that 7 there is this published article that is an epidemiology 8 study. 9 If you look at the abstract, your Honor, it's 10 talking about, you know, elevated risk. It's comparing 11 mortality patterns. It's talking about a cohort of workers. 12 It's giving the results. It's talking about the mortality 13 ratios. It's -- there's a table that has comparative lung 14 mortality risks of New York and Vermont State talc workers. 15 So, your Honor, I should be able to lay a 16 foundation for my expert to testify about this document, 17 just as they are going to attempt to lay the foundation for 18 their experts to talk about any epidemiology studies or any 19 scientific studies on Vermont or Italian talc workers. 20 MR. KURLAND: I'll just -- 21 MR. BLOCK: They did say, in opening, that none of 22 the miners and millers -- we could find it. Is this on the 23 CDC website? 24 MR. HARTLEY: It is. 25 MR. BLOCK: This is on the Center for Disease</p>

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<p>1 Control's website right now, CDC.gov. So this is done -- I</p> <p>2 mean, it's still on the CDC website now. So -- but, your</p> <p>3 Honor, they told the jury that none of the miners and</p> <p>4 millers get sick. And they even said, when Dr. Moline comes</p> <p>5 in, we are going to show you that, you know, she used to say</p> <p>6 the miners and miller studies were important, and now she</p> <p>7 says they are not.</p> <p>8 Dr. Moline has to be able to fully explain her</p> <p>9 opinions with regard to the miner and miller studies, and</p> <p>10 she's needs to be able to rely upon material that I could</p> <p>11 lay a foundation for her to rely upon.</p> <p>12 MR. KURLAND: I'll point out, it says</p> <p>13 "Epidemiology" at the top. It does not contain any</p> <p>14 particular citations. There is nowhere on this document</p> <p>15 that says where it was published, when it was published or</p> <p>16 whether it was subject to peer review.</p> <p>17 The fact that you could find it on the CDC Pubmed</p> <p>18 database doesn't indicate that it was published in any</p> <p>19 particular piece of literature. I mean, that's not on the</p> <p>20 face of this document either. I mean, there's no indication</p> <p>21 this was published.</p> <p>22 MR. HARTLEY: Your Honor, I just offer one thing</p> <p>23 here. This is -- we've heard evidence like this throughout</p> <p>24 case. This is data that an expert is relying upon. If</p> <p>25 there's going -- if they win the day here on this article,</p>		<p>1 there. There are responses. There are all kinds of things</p> <p>2 that are on Pubmed that are not what is known in the</p> <p>3 scientific community as a peer-reviewed article, which is a</p> <p>4 very specific thing.</p> <p>5 MR. HARTLEY: The letters to the editor that go on</p> <p>6 Pubmed are peer reviewed. You'll hear about that.</p> <p>7 MR. KURLAND: By definition, a letter to an editor</p> <p>8 is not peer-reviewed.</p> <p>9 THE COURT: Do I have 15 minutes to decide to think</p> <p>10 about it. Can you move on?</p> <p>11 MR. BLOCK: I don't think so, your Honor. I'm</p> <p>12 sorry, I --</p> <p>13 MR. KURLAND: Should we take our afternoon break?</p> <p>14 MR. HARTLEY: We've only been going for 45 minutes.</p> <p>15 MR. BLOCK: I have very limited ground to cover</p> <p>16 before we do damages, some testimony about damages and show</p> <p>17 some medical records.</p> <p>18 I mean, so I did not anticipate --</p> <p>19 THE COURT: Five minutes.</p> <p>20 MR. BLOCK: Sure.</p> <p>21 THE COURT: Give me five minutes.</p> <p>22 MR. BLOCK: Your Honor, I'm not trying to limit</p> <p>23 your time on anything. I'm surprised that there is an</p> <p>24 objection to an expert relying upon a published article.</p> <p>25 THE COURT: Why would you be surprised? They are</p>	
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<p>1 none of what they want to talk about about epidemiology</p> <p>2 would be able to come in, because it's scientific evidence</p> <p>3 that they their experts want to rely upon, but it's hearsay</p> <p>4 so it can't come in.</p> <p>5 This is just -- the -- not to mention the fact that</p> <p>6 Johnson & Johnson had this document within its files as</p> <p>7 well. And we'll come to that later in the case, if we</p> <p>8 decide to try to admit that, but this document is of the</p> <p>9 sort that an expert would rely upon. This is squarely</p> <p>10 within -- they may not like it, but that's not the standard</p> <p>11 for admission. The standard for admission is, is it of the</p> <p>12 type that an expert in the field would rely upon. It's --</p> <p>13 experts can rely upon hearsay because that's the only way</p> <p>14 they could do their job. And it is published in a</p> <p>15 peer-reviewed document. And as Counsel point out, I will</p> <p>16 disagree with Counsel that if something is on Pubmed, it's a</p> <p>17 published peer-reviewed document, because only published</p> <p>18 peer-reviewed evidence gets onto the CDC Pubmed website. He</p> <p>19 says that's not true. I'm telling you --</p> <p>20 THE COURT: I don't know whether that's true.</p> <p>21 MR. HARTLEY: You could look, take judicial notice</p> <p>22 of it, your Honor. If you looked at it -- because it's</p> <p>23 crystal clear that only published peer review articles get</p> <p>24 on the CDC website for Pubmed.</p> <p>25 MR. KURLAND: There are letters to the editor on</p>		<p>1 objecting about everything and you are objecting about</p> <p>2 everything.</p> <p>3 MR. BLOCK: I don't recall objecting to much</p> <p>4 anything in this trial. But, your Honor, the point is, if</p> <p>5 that's going on the standard, then I don't see how their</p> <p>6 experts are going to testify.</p> <p>7 THE COURT: You are not giving me five minutes?</p> <p>8 MR. BLOCK: Take ten, 15, a half hour. I would</p> <p>9 never impose upon the Court.</p> <p>10 THE COURT: Let me think about it.</p> <p>11 MR. HARTLEY: We will let you definitely you do</p> <p>12 that.</p> <p>13 (Continued on the next page.)</p>	

<p>Direct-Moline-Block Page 2255</p> <p>1 THE COURT: We'll put this to the side for a</p> <p>2 moment. Could you ask about something else or you cannot?</p> <p>3 MR. BLOCK: I can -- I can try to go on to</p> <p>4 something else, your Honor.</p> <p>5 Q Let's talk about the Italian talc miners and millers.</p> <p>6 All right. Let's skip past the Vermont talc miners and millers</p> <p>7 right now. You have you reviewed epidemiology studies on the</p> <p>8 Italian talc miners and millers?</p> <p>9 A Yes.</p> <p>10 Q And approximately how many people are included in</p> <p>11 the Italian talc workers study?</p> <p>12 A It was about less than 2,000.</p> <p>13 Q And were any cases of mesothelioma reported in the</p> <p>14 studies of the Italian talc miners and millers in the studies</p> <p>15 themselves?</p> <p>16 A No.</p> <p>17 Q And are you aware of the identification of a case of</p> <p>18 mesothelioma among an Italian talc worker that was identified by</p> <p>19 an author called Mirabelli?</p> <p>20 A Yes.</p> <p>21 Q And how did Mirabelli bring to the attention of the</p> <p>22 scientific community that there is a case of mesothelioma in a</p> <p>23 person who worked at the Italian talc miner mill?</p> <p>24 A He wrote a letter to the editor.</p> <p>25 Q And was it indicated in the letter to the editor from</p>	<p>Direct-Moline-Block Page 2257</p> <p>1 A There were a number of folks that have had a very short</p> <p>2 latency period. So -- And we don't know what happened after</p> <p>3 they stopped looking at them for this study. So, we don't know</p> <p>4 what happened to them in follow up.</p> <p>5 Q So, what conclusions were you able to draw from the</p> <p>6 Italian talc worker miner and miller studies given the less than</p> <p>7 2,000 people in that study group?</p> <p>8 A Well, it's a small study group for folks who are</p> <p>9 working with product that has a very small percentage of</p> <p>10 asbestos. We know from other miner studies of folks with --</p> <p>11 that are mining pure asbestos or virtually pure asbestos, that</p> <p>12 there is a small number of cases that you would expect to see in</p> <p>13 people mine or milling a thousand percent asbestos compared to</p> <p>14 less than one percent asbestos.</p> <p>15 Q Or a hundred percent asbestos compared to less than one</p> <p>16 percent?</p> <p>17 A Correct. I'm sorry if I misspoke. So, it's a small</p> <p>18 sample size. There is a question about latency. Some question</p> <p>19 about disease ascertainment. But primarily it's a sample size.</p> <p>20 And they also looked at mortality of less than a thousand</p> <p>21 individuals to look at what they actually died of. So the whole</p> <p>22 sample size was in the 2,000 range, but then the first study</p> <p>23 that was published only looked at the death certificates of less</p> <p>24 than 900 individuals who had passed on at the time of the study.</p> <p>25 Subsequent studies -- There were two other studies that were</p>
<p>Direct-Moline-Block Page 2256</p> <p>1 Mirabelli whether the person who developed mesothelioma met the</p> <p>2 criteria of the people that were being looked at in the Italian</p> <p>3 talc workers studies?</p> <p>4 A Mirabelli stated that he believed he did.</p> <p>5 Q Okay. And what was the criteria in terms of who they</p> <p>6 looked at in the Italian talc studies, how long they worked</p> <p>7 there, how old they were, gender, issues like that?</p> <p>8 A They looked for people who had worked there for a month</p> <p>9 or more. So, if you worked there for 32 days, you could be</p> <p>10 included. If you worked there for 30 years, you could be</p> <p>11 included. So, one month was the criteria.</p> <p>12 Q What about the issue of latency. Did they only look at</p> <p>13 workers that had worked there for a long time? How many people</p> <p>14 had been working there for, you know, going back 40 years, do</p> <p>15 you recall those details?</p> <p>16 A I don't. Some had worked there longer, but many had</p> <p>17 not worked there for a long period of time. It was -- it was a</p> <p>18 wide spectrum of the amount of time folks had spent in the</p> <p>19 mines. I don't have the exact numbers memorized.</p> <p>20 Q Okay. Were there a significant percentage of people</p> <p>21 that -- that where the latency may have been too short to</p> <p>22 determine whether ultimately they will get mesothelioma?</p> <p>23 A Yes.</p> <p>24 MS. PAGONIS: Objection. Leading.</p> <p>25 THE COURT: Overruled. You may answer.</p>	<p>Direct-Moline-Block Page 2258</p> <p>1 done later of different groups, so it wasn't really a follow-up</p> <p>2 study, after dust suppression had been put in place in the</p> <p>3 mill -- in the mills and in the mines, so we don't know what the</p> <p>4 exposures they had because there were some administrative</p> <p>5 controls meaning the company did dust suppression. And in those</p> <p>6 cases they excluded anybody who was over 85.</p> <p>7 Q What's the significance of studying a group of workers</p> <p>8 and excluding people that are over age 85?</p> <p>9 A Well, I've certainly seen mesothelioma in people over</p> <p>10 85. It means that if someone is 84, you could only -- they only</p> <p>11 counted someone who had a mesothelioma up to 84 and 364 days.</p> <p>12 If they were 85 and one day, they wouldn't look at them. And</p> <p>13 you can't tell me there is any biological difference between</p> <p>14 84 years, 364 days and 85 years and one day in terms of a</p> <p>15 person. But they wouldn't be included. So they cut them off at</p> <p>16 85. And that will also potentially cut off folks who had longer</p> <p>17 latency.</p> <p>18 Q Were there any women who worked in the Italian talc</p> <p>19 mines or mills for any amount of time?</p> <p>20 A There were a small number. They excluded them as well.</p> <p>21 Q Okay. Were -- Was there -- Were there peritoneal</p> <p>22 cancers identified in the Italian talc miner, miller studies?</p> <p>23 A There were.</p> <p>24 Q Okay. How many, do you recall?</p> <p>25 A I believe there were two.</p>

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<p>1 Q Now, you told us that Donna Olson has mesothelioma in</p> <p>2 the pleura. Where is the second most commonplace for</p> <p>3 mesothelioma to occur?</p> <p>4 A In the peritoneum.</p> <p>5 Q And do the studies give any reason why they're</p> <p>6 identifying these two peritoneal cancers as peritoneal cancer</p> <p>7 versus peritoneal mesothelioma?</p> <p>8 A No. They didn't give any further information that</p> <p>9 would allow you to differentiate between what would be the more</p> <p>10 common cause particularly in men of peritoneal cancers might be</p> <p>11 mesothelioma. They didn't give any information. They just said</p> <p>12 there were two peritoneal cancers, but they are not</p> <p>13 mesothelioma, but there is no information for us to know whether</p> <p>14 that's correct or not.</p> <p>15 Q So, based upon your knowledge and experience, is a</p> <p>16 peritoneal based cancer in men often mesothelioma?</p> <p>17 A Without another primary, yes. In women, sometimes you</p> <p>18 have a disease called primary peritoneal cancer, but there are</p> <p>19 cell markers that can differentiate. They didn't provide any of</p> <p>20 that information. They said they are peritoneal cancers and</p> <p>21 that was all the information they had.</p> <p>22 Q Now, over the last one to two years have you had access</p> <p>23 or one or two or three years have you had access to the first</p> <p>24 time to Johnson & Johnson's documents discussing certain of the</p> <p>25 Italian talc miner and miller studies?</p>		<p>1 company has a vested interest in the findings and the research</p> <p>2 that's being done, there has to be disclosure. There has to be</p> <p>3 transparency. And there was none. Another factor that I became</p> <p>4 aware of was that Johnson & Johnson had people who are actively</p> <p>5 writing the results and conclusions of the paper. So, it's</p> <p>6 unclear who actually wrote the paper, if it was Dr. Rubino and</p> <p>7 coauthors or some other individuals who actually took part in</p> <p>8 the paper, and that's against medical journal standards and</p> <p>9 ethics. There is actually rules about ghost writing now that it</p> <p>10 has to be disclosed. Certainly the people funding the study</p> <p>11 should not be writing the paper without them being listed as</p> <p>12 authors and there being transparency and there was none.</p> <p>13 Q Okay. Just to be clear, did you know anything about</p> <p>14 those details before the last three years when you first had the</p> <p>15 opportunity to review the Johnson & Johnson documents produced</p> <p>16 in litigation?</p> <p>17 A I did not. I took the studies as being at face value</p> <p>18 that they were independent work. And what I've learned over the</p> <p>19 past two, three years is that the work was not independent.</p> <p>20 Q And in terms of some of the other Italian talc miner,</p> <p>21 miller studies, were any of those authored by people that were</p> <p>22 affiliated with either Johnson & Johnson or the company that</p> <p>23 supplied the talc in a way that was not identified in a</p> <p>24 published article?</p> <p>25 A There is a second paper. The author's name is</p>	
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<p>1 A Yes.</p> <p>2 Q And when you had testified prior to the last three</p> <p>3 years about the Italian talc miners and miller studies, did you</p> <p>4 ever before have any access to the Johnson & Johnson documents</p> <p>5 discussing these studies?</p> <p>6 A I did not.</p> <p>7 Q And is there anything in terms of your review of</p> <p>8 Johnson & Johnson's historical records regarding the Italian</p> <p>9 talc miners and miller studies that have limited your reliance</p> <p>10 on these studies?</p> <p>11 A Yes.</p> <p>12 Q And what is that?</p> <p>13 A I've seen documents that discuss that Johnson & Johnson</p> <p>14 had to approve the protocol and they controlled the study. They</p> <p>15 paid the lead author. It's unclear if other people received</p> <p>16 money. And that in and of itself is, people often get paid to</p> <p>17 do studies, but it was never disclosed that J & J had paid, I</p> <p>18 believe it was, \$30,000 in 1976 for the lead author.</p> <p>19 Q Is that a person named Rubino?</p> <p>20 A Rubino, correct.</p> <p>21 Q Just because Johnson & Johnson paid money for the</p> <p>22 study, is that an issue in and of itself or was it disclosed in</p> <p>23 the published paper?</p> <p>24 A It was not disclosed in the paper. Companies pay for</p> <p>25 work to be done, but there has to be a wall between when the</p>		<p>1 Coggiola, C-O-G-I-O-L-A. He was actually the medical director</p> <p>2 for the mine company that was supplying the talc.</p> <p>3 Q Is that Imerys?</p> <p>4 A I believe so. That was not disclosed in the paper.</p> <p>5 That came out in the 90s, I think.</p> <p>6 Q And I think the jury will hear about that paper. So</p> <p>7 the paper that was -- where Coggiola was the lead author, was he</p> <p>8 disclosed in that paper, in that paper as being employed by</p> <p>9 Imerys, the mine company?</p> <p>10 A It was not disclosed.</p> <p>11 Q You mentioned I think -- So just in terms of the number</p> <p>12 of people involved in the Italian talc miner, miller studies,</p> <p>13 less than 2,000, just in terms of the rarity of the disease</p> <p>14 mesothelioma, is that a large group of workers where you</p> <p>15 necessarily expect to detect a case of mesothelioma?</p> <p>16 A No. There are a number of factors that would go into</p> <p>17 assessing whether you have what's called adequate statistical</p> <p>18 power. Part of that is how frequently do you expect to see the</p> <p>19 disease in the population. The second factor is what are they</p> <p>20 being exposed to and what's the percentage. Is it a high</p> <p>21 exposure. Is it a lower exposure. That will affect the number</p> <p>22 of folks that you need to include in your study to be able to</p> <p>23 have sufficient statistical power.</p> <p>24 We're dealing with a disease that has a rate of let's</p> <p>25 say 13 per million in the United States. I'm not exactly sure</p>	

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<p>1 what the Italian rates are. But it's still a rare disease. So,</p> <p>2 here we have a population that's significantly less than a</p> <p>3 million. And they were only looking at actually less than a</p> <p>4 thousand folks who had passed away in the first study. So,</p> <p>5 given the factors that it was less than one percent asbestos and</p> <p>6 there were less than a thousand folks they were looking at, they</p> <p>7 did not have adequate statistical power to see any</p> <p>8 mesotheliomas, if they existed.</p> <p>9 Q Okay. I would like to talk to you about the Vermont</p> <p>10 talc workers and --</p> <p>11 THE COURT: Lay a foundation.</p> <p>12 MR. BLOCK: On this issue?</p> <p>13 THE COURT: Yes.</p> <p>14 MR. BLOCK: Yes, your Honor.</p> <p>15 Q Dr. Moline, I want to ask you about some of the</p> <p>16 Vermont -- I want to ask you about studies that have been done</p> <p>17 looking at Vermont talc workers, and one of the studies I want</p> <p>18 to ask you about is the study by Lamm. And is the Lamm article</p> <p>19 a published study that you have considered in terms of looking</p> <p>20 at all the information that's available, where there is</p> <p>21 published literature looking at Vermont miners and millers and</p> <p>22 health outcomes?</p> <p>23 A Yes.</p> <p>24 Q And is that article by Lamm, is that an epidemiology</p> <p>25 study that looks at a particular cohort of Vermont talc workers?</p>		<p>1 mesothelioma, in what was called a Vermont talc man. Just to</p> <p>2 give a little more detail about that, do they define the group</p> <p>3 of Vermont talc workers that were being looked at in that study</p> <p>4 in terms of when they worked with Vermont talc and for how long</p> <p>5 they worked? Did they describe that in the first page of the</p> <p>6 study?</p> <p>7 A They did in terms of the cohort they were following,</p> <p>8 yes.</p> <p>9 Q And can you tell us what cohort or what group they were</p> <p>10 looking at in that study?</p> <p>11 A It was employees of the Vermont talc industry that they</p> <p>12 were following from 1940 to 1970 who had at least one year of</p> <p>13 employment prior to 1970. So, I'm sorry. They were following</p> <p>14 them through 1975.</p> <p>15 Q Okay. Does it say how many?</p> <p>16 A It looks like they had mortality on 392.</p> <p>17 Q Does it say whether those workers -- I guess did the</p> <p>18 study then continue to follow the workers to see if there are</p> <p>19 any other cases of mesothelioma in those Vermont talc workers?</p> <p>20 A No.</p> <p>21 Q Have you ever seen a follow-up study on that Lamm</p> <p>22 publication that followed those workers into the future to see</p> <p>23 if any other workers got mesothelioma?</p> <p>24 A No.</p> <p>25 Q When was that study published? That copy may not have</p>	
Direct-Moline-Block	Page 2264	Direct-Moline-Block	Page 2266
<p>1 A Yes.</p> <p>2 Q And do they define the cohort they are looking at?</p> <p>3 A It was a cohort of Vermont talc, white, male, Vermont</p> <p>4 talc workers that they identified from the Vermont State Health</p> <p>5 Department, and they were looking at X-rays to look for</p> <p>6 respiratory disease and lung cancer in the workers.</p> <p>7 Q All right. And is part of what you have done here is</p> <p>8 to try to look at all the published literature on studies of</p> <p>9 Vermont talk miners and millers in forming an expert opinion as</p> <p>10 to what studies have been done and what information has been</p> <p>11 found in those studies?</p> <p>12 A Yes.</p> <p>13 Q Is the Lamm publication one of the published materials</p> <p>14 in which you have relied upon, and is it the type of material</p> <p>15 that is ordinarily relied upon by experts in the field of</p> <p>16 occupational and environmental medicine in forming opinions</p> <p>17 about the epidemiology as it relates to Vermont talc miners and</p> <p>18 millers?</p> <p>19 A Yes.</p> <p>20 Q Was there a case of mesothelioma identified in those</p> <p>21 workers that are identified as being Vermont talc miners and</p> <p>22 millers?</p> <p>23 A He described one death from mesothelioma in a, what he</p> <p>24 called a Vermont talc man.</p> <p>25 Q All right. Now in terms of this one case of</p>		<p>1 a date on it.</p> <p>2 A It does not have a date on it.</p> <p>3 Q Was it in the 70s?</p> <p>4 A It would have been probably in the late 70s, I think.</p> <p>5 Q I'll put approximately late 70s, understanding that it</p> <p>6 looks like the copy you have does not have a date on it. So</p> <p>7 were there any other studies of Vermont talc workers that you</p> <p>8 looked at and considered?</p> <p>9 A There is one other that I'm aware of which is a study</p> <p>10 by Selevan, S-E-L-E-V-A-N. And I think the cohort size was 492.</p> <p>11 And they only followed them for ten years. And did not find any</p> <p>12 disease or any mesothelioma after ten years, which is what we</p> <p>13 would expect.</p> <p>14 Q Okay. So, give us a sense of the like time period when</p> <p>15 they did the Selevan study, and then you said that they were</p> <p>16 only followed for ten years, can you give us some more detail</p> <p>17 about that and tell us the significance in terms of whether, you</p> <p>18 know, if you're looking to see if -- if you're looking at the</p> <p>19 disease mesothelioma?</p> <p>20 A So, it's too short a latency period to be able to</p> <p>21 comment meaningfully. They didn't find any mesotheliomas in</p> <p>22 individuals that had been working for ten years. So, there</p> <p>23 wasn't sufficient latency. It's also a very small sample size.</p> <p>24 I think some of the primary goals of this study were to look at</p> <p>25 pulmonary function and other factors. They did look at</p>	

<p>Direct-Moline-Block Page 2267</p> <p>1 mortality experience in these individuals.</p> <p>2 Q Okay. I have a notation from -- Let me ask you this.</p> <p>3 If the NIOSH website indicates that the Lamm study was from</p> <p>4 1990s, does that sound incorrect or you just don't know?</p> <p>5 A To be honest, I know it was before I got into the</p> <p>6 field. I don't remember when it was.</p> <p>7 Q All right.</p> <p>8 A 1990 is totally possible, but the follow up was only</p> <p>9 through '75.</p> <p>10 Q Okay. And we'll get that squared away in the record</p> <p>11 later in the case. So, in terms of the Vermont talc workers and</p> <p>12 the Selevan study, given that they looked at only 492 workers</p> <p>13 and only followed them for ten years, what conclusions can you</p> <p>14 draw from there?</p> <p>15 A You don't have enough information, because there hasn't</p> <p>16 been a follow-up study to look to see what happened to any of</p> <p>17 these individuals. The latency wasn't long enough to see any</p> <p>18 mesotheliomas, if they did arise.</p> <p>19 Q Okay. Now, have you looked at whether the Italian talc</p> <p>20 miners and millers or the Vermont miners and millers, whether</p> <p>21 they were given any protective measures to suppress the dust or</p> <p>22 to keep exposures down or to protect those workers?</p> <p>23 A Yes. I've seen both in the Italian talc miner and</p> <p>24 millers papers. They discuss that in the late 1940s dust</p> <p>25 suppression efforts were instituted within the mines and mills.</p>	<p>Direct-Moline-Block Page 2269</p> <p>1 people would avoid breathing the dust?</p> <p>2 A Yes. If you weren't directly involved in that</p> <p>3 activity, you weren't in the area. So, not only for the</p> <p>4 individuals working with it, trying to isolate it with exhaust</p> <p>5 and things like that, but you also make sure that other people</p> <p>6 don't have bystander exposure.</p> <p>7 Q Have you reviewed historical documents showing that</p> <p>8 Vermont talc workers at times were given masks and respirators</p> <p>9 to protect them from breathing in the dust from the talc?</p> <p>10 A Yes.</p> <p>11 Q Dr. Moline, if a miner, if someone is mining talc rock</p> <p>12 and they are breaking off a large piece of talc that contains</p> <p>13 asbestos, is a rock, is a large rock something that's going to</p> <p>14 be able to get in the air, remain suspended and get down into a</p> <p>15 person's lung?</p> <p>16 MS. PAGONIS: Objection. Foundation.</p> <p>17 THE COURT: I didn't hear the last words of what</p> <p>18 you said. Just a minute. You may inquire about a</p> <p>19 foundation.</p> <p>20 Q Are you aware of whether a large rock can be breathed</p> <p>21 in by a human?</p> <p>22 A I am aware that it is impossible for us to breathe in a</p> <p>23 large rock, yes.</p> <p>24 Q If a talc miner is breaking off a large piece of talc</p> <p>25 rock, is that something that is going to pose a respiratory</p>
<p>Direct-Moline-Block Page 2268</p> <p>1 And I've seen documentation regarding very specific dust</p> <p>2 suppression and other safety measures and controls in Vermont</p> <p>3 talc mines.</p> <p>4 Q And have you reviewed a historical document from the</p> <p>5 1970s that discusses very significant safety precautions being</p> <p>6 taken to protect the Vermont talc workers from breathing in the</p> <p>7 dust from the talc they were mining and milling?</p> <p>8 A Yes.</p> <p>9 MS. PAGONIS: Objection. Leading.</p> <p>10 THE COURT: Overruled. You may answer.</p> <p>11 A Yes, I have.</p> <p>12 Q All right. And did that include dust suppression?</p> <p>13 A It included dust suppression. They actually separated</p> <p>14 it from the miners, the millers and then folks packaging, I</p> <p>15 believe. So, there were very specific instructions to make sure</p> <p>16 that the exposures were minimized in these workers.</p> <p>17 Q Is one of the industrial hygiene controls that could be</p> <p>18 used to protect workers something called isolation?</p> <p>19 A Yes.</p> <p>20 Q Okay. And was isolation used in the Vermont -- for the</p> <p>21 benefit of the Vermont talc workers based upon your review of</p> <p>22 historical documents?</p> <p>23 A Yes.</p> <p>24 Q And does that mean that when there were dusty</p> <p>25 operations going on, those would be isolated in an area so</p>	<p>Direct-Moline-Block Page 2270</p> <p>1 hazard, that large talc rock?</p> <p>2 MS. PAGONIS: Objection. Foundation. Leading.</p> <p>3 THE COURT: Overruled.</p> <p>4 A The rock is -- is a rock. They're not going to breathe</p> <p>5 in a rock.</p> <p>6 Q How would you contrast someone who is breaking off a</p> <p>7 large talc rock and mine the material versus a consumer who is</p> <p>8 using a powder that is ground up into fine respirable particles?</p> <p>9 A So, a miner is going to be mining rocks. There may be</p> <p>10 some dust associated with breaking up the rocks, but it could</p> <p>11 be -- it is not going to be the same as someone using a finished</p> <p>12 product that is small and fine and is made to be put into the</p> <p>13 air and put onto the body.</p> <p>14 Q And if in the mills if -- if dust suppression is being</p> <p>15 used and if workers are being isolated into various areas to</p> <p>16 avoid exposure and masks or respiratory are being worn, how does</p> <p>17 that compare to one who is in their bathroom and using baby</p> <p>18 powder and putting it on their chest and under their arms and</p> <p>19 getting dust in the air without respiratory protection?</p> <p>20 A None of those safety or precautions are being taken in</p> <p>21 the home. So, they're not wearing the respiratory and they are</p> <p>22 not using the appropriate ventilation to make sure that that</p> <p>23 concentration in the air is low. So, it's going to be a very</p> <p>24 different exposure and it would be a higher exposure.</p> <p>25 Q Dr. Moline, we heard that just briefly, we'll see again</p>

<p>Direct-Moline-Block Page 2271</p> <p>1 Donna Olson had a procedure called a talc pleurodesis. Is that 2 procedure recommended for people that do not already have a 3 malignancy? 4 MS. PAGONIS: Objection. Leading. 5 THE COURT: You may answer. 6 A It is not recommended for people who do not have a 7 terminal disease or malignancy. 8 Q All right. And have you looked at whether there are 9 studies with people who have had Italian talc pleurodesis who 10 don't already have mesothelioma, if those people have been 11 looked at sufficiently to see if they develop mesothelioma in 12 the future? 13 A I'm aware of one study that looked at individuals that 14 used to be used for folks who develop something called a 15 spontaneous pneumothorax, meaning your lung collapses and then 16 they would put in a talc. There is about a hundred folks or so 17 in that study that were followed. So, the -- the number of 18 people that they followed, and they didn't follow them for 19 decades going forward. So, it's a very small sample size. And 20 I don't recall the exact latency, but it was not a long latency, 21 if I recall correctly, they did not find any disease among those 22 individuals, but we won't expect it given the short latency and 23 the small numbers of folks. 24 Q The jury might hear some testimony about a disease 25 called talcosis. Are you familiar with that disease?</p>	<p>Direct-Moline-Block Page 2273</p> <p>1 THE COURT: Is this a good time to take a break for 2 the jury? 3 MR. BLOCK: Yes, your Honor. Thank you. 4 THE COURT: Ten minutes. Thank you. 5 COURT OFFICER: All rise. Jury exiting. 6 (Whereupon the jury panel departed the courtroom.) 7 MR. BLOCK: The plaintiffs move into evidence 8 Plaintiffs' Exhibit 326, 33, 43, which were medical records, 9 and Plaintiffs' Exhibits 326-A and 333-A, which are 10 radiology images, a printout of radiology images. 11 (Whereupon Plaintiffs' Exhibit Nos. 326, 33, 43, 12 326-A and 333-A were marked received in evidence as of this 13 date.) 14 MR. BLOCK: My understanding is there is no 15 objection to those. 16 MS. PAGONIS: No objection. 17 MR. BLOCK: Thank you. 18 (Whereupon Plaintiffs' Exhibit Nos. 330 through 343 19 were marked received in evidence as of this date.) 20 (Whereupon a recess was taken.) 21 COURT OFFICER: All rise. Jury entering. 22 (Whereupon the jury panel entered the courtroom.) 23 THE COURT: Thank you. Please be seated. 24 MR. BLOCK: May I proceed, your Honor? 25 THE COURT: Yes, please.</p>
<p>Direct-Moline-Block Page 2272</p> <p>1 A Yes. 2 Q And is there any evidence that Donna Olson has the 3 disease called talcosis? 4 A No. 5 Q What is talcosis? 6 A Talcosis is a scarring of the lungs due to inhalation 7 of talc. 8 Q And does the fact that Donna Olson does not have 9 talcosis affect your opinion that her mesothelioma was caused by 10 asbestos from Johnson & Johnson talcum powder products? 11 A No. Talcosis, first of all, talcosis isn't malignant. 12 There is a case reported of somebody who worked with -- in a 13 talc manufacturing company who developed acute talcosis. So, 14 it's possible for folks who are working with it to develop it. 15 There is only one case that I'm aware of in the medical 16 literature, so it's very rare from that exposure. But you don't 17 need talcosis to develop mesothelioma and -- and also talcosis 18 is within the lungs, and Ms. Olson had cancer outside the lungs 19 in the pleural space. 20 Q Okay. 21 MR. BLOCK: Can we switch to the PowerPoint, 22 please. 23 Q I would like to ask some questions about Ms. Olson's 24 medical history and her treatments that she's had for her 25 disease and her future prognosis.</p>	<p>Direct-Moline-Block Page 2274</p> <p>1 Q Dr. Moline, we have just admitted Exhibits 326 through 2 343 as well as Exhibit 333-A and 326-A. And are those some of 3 the medical records that you have reviewed for Mrs. Olson that 4 we're going to discuss with the jury today? 5 A Yes. 6 Q How old was Donna Olson when she developed 7 mesothelioma? 8 A I believe she was about 62. 9 Q All right. And if you need to, just for detail, if you 10 need to refer to your report at all with regard to any of the 11 details, please feel free to do that. When Donna Olson was 12 diagnosed with mesothelioma, how was her health prior to that? 13 A She had been in good health. She was very active. 14 Q And does smoking cause mesothelioma? 15 A It does not. 16 Q Regardless, was Donna Olson a cigarette smoker or 17 someone who had been identified as someone who ever smoked 18 cigarettes? 19 A She never smoked cigarettes. 20 Q All right. What happened to Donna Olson in March of 21 2016 in terms of a change to her health? 22 A She developed a cough and shortness of breath. She 23 thought she had an upper respiratory infection and went to her 24 doctor on March 8th, and her doctor ordered a chest X-ray that 25 actually showed that she had fluid in her lung.</p>

<p>Direct-Moline-Block Page 2275</p> <p>1 Q All right. So, here's a record, Exhibit 326, and it</p> <p>2 refers to Mrs. Olson in early March of 2016 not feeling well,</p> <p>3 having upper respiratory symptoms. And then a chest X-ray was</p> <p>4 identified in a pleural effusion. Now looking at Exhibit 326-A</p> <p>5 from March 8th, 2016, Donna Olson (pointing), 62 years old,</p> <p>6 female, what is the jury looking at in terms of this chest X-ray</p> <p>7 that is significant in terms of the change that was happening</p> <p>8 with her health?</p> <p>9 A So, we're looking at what's called a chest X-ray.</p> <p>10 That's called a PA view. And what that is showing is on the</p> <p>11 right side -- And remember yesterday we talked about how that's</p> <p>12 the right and that's the left (gesturing). So, on the right</p> <p>13 side of her chest there is -- Well, actually if you look at the</p> <p>14 left side first, you see how at the base there it comes to a</p> <p>15 nice, sharp point. Move your fingers. There you go. That's</p> <p>16 actually called the costophrenic angle, that where the ribs and</p> <p>17 the diaphragm join. Normally you have that on both sides. If</p> <p>18 you look on the right side, she doesn't have that sharp angle</p> <p>19 and you actually see that it's white about half way up, which is</p> <p>20 -- it looks like a pleural effusion. That there is fluid</p> <p>21 occupying a space where her lung should be.</p> <p>22 Q And is this a classic initial sign of mesothelioma to</p> <p>23 come in with respiratory pain and a pleural effusion is</p> <p>24 discovered?</p> <p>25 A Yes. It's classic. People often have a cough,</p>	<p>Direct-Moline-Block Page 2277</p> <p>1 infection, maybe in fact she had pneumonia and the pneumonia was</p> <p>2 causing some fluid. She did not get better after -- with</p> <p>3 respect to the plural effusion after the treatment for pneumonia</p> <p>4 and her -- she initially had a fever and cough. That seemed to</p> <p>5 have gotten better. And then in mid April she had actually some</p> <p>6 fluid taken out of her lung and a procedure called a</p> <p>7 thoracentesis.</p> <p>8 Q All right. So, the jury knows, we have blowups of</p> <p>9 portions of medical records that are in evidence as Exhibit 327.</p> <p>10 So, this procedure called a thoracentesis she had in mid April</p> <p>11 of 2016, what kind of procedure was that, and what did they, I</p> <p>12 guess, remove from her body?</p> <p>13 A So, it's a procedure that -- where you use a needle.</p> <p>14 You put it in the back, into the chest cavity and you withdraw</p> <p>15 the fluid. So --</p> <p>16 Q And it indicates here that 2.1 liters of fluid were</p> <p>17 removed. So that's 2.1 liter of fluid were removed from</p> <p>18 Ms. Olson's pleural space on her right side?</p> <p>19 A Correct.</p> <p>20 Q And was anything done to try to keep the pleural</p> <p>21 effusions from continuing to happen over and over again?</p> <p>22 A So, she had a second -- she had a second thoracentesis</p> <p>23 after the first one in April, and then the fluid kept</p> <p>24 reaccumulating. In June she had the procedure where they</p> <p>25 removed the fluid, took a look and some biopsies. They did a</p>
<p>Direct-Moline-Block Page 2276</p> <p>1 shortness of breath.</p> <p>2 Q And why does mesothelioma cause fluid to build up in</p> <p>3 that manner what is called pleural effusion?</p> <p>4 A Well, the tumor is occurring in that space. It can be</p> <p>5 that some of the normal drainage for the fluid is blocked by the</p> <p>6 tumor. It could be the tumor is irritating the pleura and the</p> <p>7 body's reaction is to swell up and produce fluid in response.</p> <p>8 It's -- it's such a classic finding of mesothelioma.</p> <p>9 Q And do pleura effusions like that with people with</p> <p>10 mesothelioma produce pain and discomfort?</p> <p>11 A Often times they do. Often sometimes people will just</p> <p>12 have a cough and shortness of breath. Sometimes they will have</p> <p>13 pain, and they can actually have pain in their shoulder, even</p> <p>14 though the fluid may be at the base of their lung, because it's</p> <p>15 called referred pain. But those are all classic findings.</p> <p>16 Q So what happened then? So, Donna Olson was having this</p> <p>17 discomfort. She had the chest X-ray. It's all white on the</p> <p>18 right side. So they identify this pleural effusion. What</p> <p>19 happened next?</p> <p>20 A So then she went and had additional testing. And she</p> <p>21 had a CAT scan that showed she had a pleural effusion, but they</p> <p>22 didn't see much else. And then she was treated for a possible</p> <p>23 pneumonia. In some cases pneumonia can cause fluid to develop.</p> <p>24 That wasn't the case here, but that was the initial thought,</p> <p>25 that maybe because she had symptoms of an upper respiratory</p>	<p>Direct-Moline-Block Page 2278</p> <p>1 surgical procedure called a thoracoscopy where they made small</p> <p>2 incisions. Put a camera in. Removed the fluid that was there.</p> <p>3 Took biopsies. And then put the talc in to prevent the fluid</p> <p>4 from reaccumulating. Basically it makes the two pleural</p> <p>5 surfaces that we talked about yesterday, the parietal and the</p> <p>6 visceral, makes them stick together in the hopes that the fluid</p> <p>7 won't reaccumulate. And they did that at that point.</p> <p>8 (Continue on the next page.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p>Moline - Plaintiff - Direct (Mr. Block) Page 2279</p> <p>1 Q It indicates that they actually put four grams of talc 2 in the pleural surface of Ms. Olson. And is this common that 3 people with mesothelioma have these pleural effusions that keep 4 happening, such that one of the only things that could be done 5 is to do this talc pleurodesis procedure to keep the fluid from 6 reaccumulating and then having to be drained over and over? 7 A They either do the talc pleurodesis or they could do a 8 pleurodesis with different chemicals. Sometimes they put a 9 catheter that stays in in the pleural space and then people will 10 drain it once a day, if they don't put the talc in. 11 Q All right. And this next slide Exhibit 329. 12 (Whereupon, a demonstrative aid was shown on the 13 screen.) 14 Q It indicates that just after that pleuroscopy, was the 15 preliminary diagnosis -- they did not have a diagnosis yet? 16 A They did not. So the initial frozen, what -- it's 17 called frozen section because it's done immediately, did not 18 show that there was any abnormality. 19 The pathology was then sent over, what is called final 20 pathology, and I think sent to the Mayo Clinic for review. And 21 the pathologist at the Mayo Clinic did special testing on it, 22 special stains that are the type of stains that differentiate to 23 see what kind of cancer it is to be able it say it's a 24 mesothelioma. And that's where they found that it was a 25 mesothelioma.</p>	<p>Moline - Plaintiff - Direct (Mr. Block) Page 2281</p> <p>1 right extra pleuropneumonectomy, and she had resection of her 2 diaphragm, with reconstruction. And she also had a resection 3 and reconstruction of her pericardium. 4 Basically, what they are doing is, they are cutting out 5 part of her rib to gain access to the chest, and then they are 6 removing the right lung, with the pleura surrounding the lung. 7 They are trying to get as much visible tumor as possible, so 8 they are removing all the pleura, both on the chest wall and on 9 the lung itself. And then they are also removing either part or 10 all of the diaphragm, because the diaphragm is covered with the 11 pleura as well, so there's often areas of tumor on the pleura. 12 And then the surgeon will put in mesh, or another 13 material, to have that same barrier between the chest cavity and 14 abdominal cavity that the diaphragm muscles serve. So that's 15 what the surgeon did there. 16 And also as we talked about yesterday, the heart sac, 17 the pericardium has the same type of tissue, and there can often 18 be tumor on the outside of the pericardium and sometimes can 19 grow into the pericardium. So often the surgeons will also 20 remove part of the pericardium and also put a patch there to 21 make sure that it's -- the integrity is more intact. 22 Q Have you reviewed records, and we have Exhibit 331 in 23 evidence, and other records? 24 (Whereupon, a demonstrative aid was shown on the 25 screen.)</p>
<p>Moline - Plaintiff - Direct (Mr. Block) Page 2280</p> <p>1 Q And it says that "Patient became very anxious when I 2 asked her questions about past medical history. Her" -- maybe 3 husband -- "has also become very anxious and said were happy in 4 the knowledge that the biopsies done yesterday were normal, and 5 in this process where someone is getting a biopsy and they are 6 trying to determine what the disease is." Was this something 7 that can cause distress in patients and anxiety? 8 A Yes. And often the waiting period, sometimes it's 9 challenging to diagnose mesothelioma, and so the pathology will 10 often take several days, and some cases weeks to come back. And 11 it's tremendously anxiety producing for folks not to know what 12 is wrong with them. 13 They may know they have some kind of cancer, but they 14 don't know what kind, or they might be told that there's nothing 15 there, but let's get the final review, and then they do find out 16 that they have a mesothelioma. 17 Q And ultimately, was there a definitive diagnosis of 18 malignant mesothelioma for Ms. Olson, and did she go forth with 19 a major surgery to try to prolong her life? 20 A She did. 21 (Whereupon, a demonstrative aid was shown on the 22 screen.) 23 Q What was that surgery that she had, and when did it 24 take place. And we have Exhibit 330 in evidence. 25 A So on August 18, 2016, she had a procedure called a</p>	<p>Moline - Plaintiff - Direct (Mr. Block) Page 2282</p> <p>1 Q Was this an 11-day hospitalization for this surgery? 2 A Yes. 3 Q And looking at some of the notes, I would like to ask 4 you about from August 18 to August 29, 2016. There is a note 5 here. "The day after the surgery that plaintiff has been 6 nauseous and vomited. Plaintiff medicated with zofran with 7 little to no relief." 8 What is it about major surgery that can cause nausea 9 and vomiting in that manner? 10 A There are a variety of factors. I mean, they were 11 mucking around with her in the area around her abdominal cavity, 12 and also some of the medications, the postanesthesia -- it's a 13 very extensive surgery. It's usually several hours. And people 14 can have adverse reactions to the anesthesia, as well as some of 15 the pain medication that they are given. So somebody having 16 nausea is very common. She was given a medication. Zofran is a 17 medication for nausea. It didn't seem to be helping her too 18 much right after surgery? 19 Q And it indicates here, a few days later, "Possible 20 psych for depression related to cancer diagnosis." 21 Have you seen throughout the medical records references 22 -- some references of depression and a number of references to 23 anxiety, that Ms. Olson has related to her diagnosis of 24 mesothelioma? 25 A Yes.</p>

<p>Moline - Plaintiff - Direct (Mr. Block) Page 2283</p> <p>1 Q And is there also an indication in the medical records</p> <p>2 that prior to her mesothelioma that Ms. Olson did not have a</p> <p>3 prior history of depression and anxiety?</p> <p>4 A I did not see any notice of that in her prior records.</p> <p>5 I do know that she had at least one visit to the emergency room</p> <p>6 where she had an anxiety attack.</p> <p>7 Q After she developed the mesothelioma?</p> <p>8 A After the mesothelioma.</p> <p>9 Q Okay. And looking more at this hospital stay.</p> <p>10 (Whereupon, a demonstrative aid was shown on the</p> <p>11 screen.)</p> <p>12 Q It says -- states "She she is very weak." Talked about</p> <p>13 use of a walker, taking stool softeners.</p> <p>14 And what about the surgery or the pain medication has</p> <p>15 impacts on the bowels that would require stool softeners?</p> <p>16 A So narcotics are given postoperative. This is major</p> <p>17 surgery and she would have had narcotics. And one of the side</p> <p>18 effects of narcotics is that they actually will slow the gut</p> <p>19 down.</p> <p>20 THE COURT: Slow the?</p> <p>21 THE WITNESS: The gut, the intestines.</p> <p>22 A And as a result, typically people are given stool</p> <p>23 softeners, because opiate related constipation can be intensely</p> <p>24 painful, it can also lead to vomiting and other things that you</p> <p>25 don't want in somebody who's just had chest surgery. You don't</p>	<p>Moline - Plaintiff - Direct (Mr. Block) Page 2285</p> <p>1 coming back so that there is swelling in their extremities,</p> <p>2 particularly their lower legs, because gravity doesn't help in</p> <p>3 that fashion.</p> <p>4 Q Looking more at this hospitalization, "Patient sitting</p> <p>5 in a recliner chair all day today. Cannot be comfortable in</p> <p>6 bed."</p> <p>7 Is that along the same lines that you were just</p> <p>8 explaining to us?</p> <p>9 A Yes.</p> <p>10 Q All right.</p> <p>11 (Whereupon, a demonstrative aid was shown on the</p> <p>12 screen.)</p> <p>13 Q Let's go onto -- I want to ask you about this: So</p> <p>14 after the surgery and before the surgery they diagnosed</p> <p>15 mesothelioma. Is there a description here that mesothelioma, I</p> <p>16 guess that's significant in any way in terms of the encasing of</p> <p>17 the lung, the involvement of the pleura, parietal and visceral,</p> <p>18 and the infiltrating or the invasion into the diaphragm muscle.</p> <p>19 How is that significant in looking at Ms. Olson and</p> <p>20 what she was experiencing, and her prognosis?</p> <p>21 A So it shows that the tumor was pretty extensive. As</p> <p>22 mesothelioma grows, it becomes like a rind, or like a peel.</p> <p>23 Think of an orange and it's encasing, the inside pulp of an</p> <p>24 orange. In this case the lung is like the pulp, and the orange</p> <p>25 peel or the skin is what the tumor is like.</p>
<p>Moline - Plaintiff - Direct (Mr. Block) Page 2284</p> <p>1 want that in anyone. But -- so there's -- people are put on</p> <p>2 what is called a bowel regimen to make sure that they don't</p> <p>3 develop this side effect of the medication.</p> <p>4 Q And the next day, on August 27th, 2016 it says, "Some</p> <p>5 complaints of increasing shortness of breath when she lies flat,</p> <p>6 as well as swelling in her legs."</p> <p>7 And so, talk to us about the shortness of breath while</p> <p>8 lying flat, and the swelling of the legs, in light of</p> <p>9 Ms. Olson's surgery and her condition.</p> <p>10 A So she's having increasing shortness of breath, which</p> <p>11 is she's -- her body is adapting to the fact that it used to</p> <p>12 have two sides -- two lungs, in essence, and now she only has</p> <p>13 one lung. So her body is getting used to that.</p> <p>14 And she's not -- the sensation that she is not able to</p> <p>15 lie flat. Many people don't feel comfortable lying flat. They</p> <p>16 feel like they can't take a deep enough breath. Also, it hurts</p> <p>17 to take a deep breath because you've had surgery on one side of</p> <p>18 your chest, then you are not able to take that deep breath, so</p> <p>19 that can lead to more of increasing shortness of breath when you</p> <p>20 are lying flat.</p> <p>21 The swelling in her legs can be due to fluid shifts, as</p> <p>22 a result of the surgery. It can be due to the problems with the</p> <p>23 lymphatics. It's something that is seen in individuals with</p> <p>24 mesothelioma, which they can develop a condition called</p> <p>25 lymphedema, where there can be problems with the lymph flow</p>	<p>Moline - Plaintiff - Direct (Mr. Block) Page 2286</p> <p>1 So they are removing that. The concern was that</p> <p>2 actually they found that the tumor invaded into the muscle, so</p> <p>3 then your concern is that it spread into the chest wall muscles</p> <p>4 as well, as well as the diaphragm. And then it means it might</p> <p>5 be able to get into the abdomen where it can spread into the</p> <p>6 abdomen.</p> <p>7 Another concern is -- was that the margin of the tumor</p> <p>8 was not clean. So they knew that even when they removed part of</p> <p>9 -- they weren't able to remove all of the tumor because it was</p> <p>10 too close to a major blood vessel and it was too dangerous to do</p> <p>11 that. So there was some residual tumor left, even after this</p> <p>12 very extensive surgery, which puts her at greater risk of</p> <p>13 reoccurrence.</p> <p>14 Q So what happened after Ms. Olson's surgery after she</p> <p>15 was discharged from the hospital after that 11-day stay? What</p> <p>16 sort of happened in the course of her medical treatment and care</p> <p>17 and her disease process?</p> <p>18 A So typically when people have this very aggressive</p> <p>19 surgery they -- it doesn't only -- the treatment doesn't stop</p> <p>20 with the surgery, but people are given what is called adjuvant</p> <p>21 chemotherapy, meaning chemotherapy after surgery, typically for</p> <p>22 four cycles of combination chemotherapy. And then they are also</p> <p>23 given radiation treatments to make sure that if there is any</p> <p>24 residual tumor left that the radiation will affect the cells,</p> <p>25 the cancer cells that are remaining.</p>

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1 Ms. Olson received both of those treatments over the
2 course of the fall of 2016. And then she basically -- after the
3 radiation, there wasn't much more treatment that is typically
4 done. And she was just followed by her oncologist and her other
5 doctors.

6 She did have difficulty with -- the swelling that
7 started when she was in the hospital persisted, and has, to my
8 understanding, continued to persist. From the reading of the
9 medical records, that's impaired her ability to ambulate.

10 Q To ambulate, to move?

11 A To walk, to -- she can't go up to her bedroom upstairs
12 because she can't climb the stairs.

13 Q Let me stop you there. I want to ask you about some of
14 the records.

15 (Whereupon, a demonstrative aid was shown on the
16 screen.)

17 Q So after the surgery that she had and her
18 hospitalization, there is a record, Exhibit 333, that says there
19 was a Port-A-Cath placement and procedure for that.

20 What is a Port-A-Cath and what was it used for with
21 Ms. Olson?

22 A So a Port-A-Cath is an implantable device that is put
23 so that the chemotherapy can be administered, and other
24 intravenous fluids, but it provides an easier access rather than
25 trying to find a vein and putting in an intravenous line, which

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1 the development of lower extremity edema, which has been
2 limiting her ambulation."

3 Is that what you are explaining to the jury?

4 A Yes.

5 Q And in terms of this note here, "No known asbestos
6 exposure."

7 Again, does that surprise you, in terms of the
8 indication of no known asbestos exposure, based upon the
9 questions you would expect Ms. Olson's treating doctors to ask
10 about, and what you would expect people to know in terms of
11 asbestos in talcum powder?

12 A It's not surprising at all.

13 (Whereupon, a demonstrative aid was shown on the
14 screen.)

15 Q Here it indicates the radiation treatments that you
16 told the jury about, that she had 30 radiation treatments which
17 ended March 28th, 2017.

18 It says, "Prior to cancer diagnosis, patient was
19 independent with self care and ambulation." It indicates here,
20 on June 15th, 2017, "That patient requires wheelchair for
21 community ambulation and requires assistance for all self care,
22 such as bathing, dressing, and with all household and cooking
23 tasks from her husband. And it says she sleeps in a recliner."

24 Based upon your review of the medical records, was
25 Donna Olson ever able to sleep in her bed after she had the

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1 often can be difficult in individuals, especially if someone is
2 having swelling in their arms. So it's -- it was a way for them
3 to get the chemotherapy.

4 Q And then we have another chest x-ray from November 15,
5 2016 --

6 (Whereupon, a demonstrative aid was shown on the
7 screen.)

8 Q -- after the extra pleuropneumectomy. And I think --
9 do we see here a rib that had been cut out?

10 A Yes. So that was -- as part of the surgery they had to
11 cut out her rib to gain access to the chest. And you could see
12 evidence of a missing rib on that film.

13 What you also see is no lung is present on the right
14 side anymore, and it's all filled with fluid, except for the --
15 there is a tiny bit of air at the very top, but eventually that
16 will fill with fluid. That is the body's normal response after
17 a lung is removed.

18 (Whereupon, a demonstrative aid was shown on the
19 screen.)

20 Q You mentioned chemotherapy. And here, on January 27th,
21 2017. It indicates that she completed four cycles of cisplatin
22 and alimta. Is that the chemotherapy she had?

23 A Correct.

24 Q Last cycle, December 8th, 2018. It says, "She
25 tolerated this overall poorly. She indicates, including with

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1 extra pleuropneumectomy surgery?

2 A No.

3 Q And these issues with the lymphedema and the swelling,
4 and needing a wheelchair or a walker, not being able to climb
5 stairs to the bedroom, um, based upon your review of the medical
6 records, has that been continuing from the time that she had
7 that surgery back in 2016, up to this day?

8 A Yes.

9 (Whereupon, a demonstrative aid was shown on the
10 screen.)

11 Q And it says here, July 11, 2017, "Increased swelling
12 and pitting in bilateral feet." And wearing these foot garments
13 to try to help with that. What does it mean, pitting?

14 A "Pitting" is when you -- someone has swelling in their
15 feet, you actually can press your finger down and you'll see the
16 pit or the -- it's a way of assessing how much fluid is in
17 someone's lower legs, typically in the lower legs. It can be
18 anywhere in the body, but it just shows there's a significant
19 amount of swelling.

20 Q Here, on July 11, 2017, it says, "Painful (B)LE." What
21 does that mean?

22 A Bilateral lower extremity. Means pain in both her
23 lower legs.

24 Q Is that from the lymphedema that followed the surgery
25 and chemotherapy?

<p>Moline - Plaintiff - Direct (Mr. Block) Page 2291</p> <p>1 A And the swelling, yes.</p> <p>2 (Whereupon, a demonstrative aid was shown on the</p> <p>3 screen.)</p> <p>4 Q Do we see this condition continuing August 8th, 2017,</p> <p>5 "Patient requiring wheelchair, requiring assistance for all self</p> <p>6 care, such as bathing, dressing, all household tasks."</p> <p>7 Is that indicated in the medical records?</p> <p>8 A Yes.</p> <p>9 Q And based upon your experience with patients, in</p> <p>10 addition to the physical pain, is it difficult for people who</p> <p>11 are always independent to need to have help with everything,</p> <p>12 including bathing?</p> <p>13 A It's a tremendous challenge. It's a challenge not only</p> <p>14 for the individual who has lost their autonomy, but for their</p> <p>15 caregivers who change from being a partner to a caregiver, so</p> <p>16 that it puts -- it provides a lot of challenges. But it can be</p> <p>17 very difficult for the patients who want to do things on their</p> <p>18 own and they are just physically unable to.</p> <p>19 Q And here it says that Ms. Olson -- or Mr. Olson is</p> <p>20 helping Ms. Olson with bathing, dressing, and as you said, is</p> <p>21 that difficult for caregiver as well?</p> <p>22 A It's -- it becomes a full-time job, and it can</p> <p>23 emotionally very draining as well to see your loved one</p> <p>24 suffering and have having to do all -- not to mention having to</p> <p>25 do all the work around the house that might have been shared</p>	<p>Moline - Plaintiff - Direct (Mr. Block) Page 2293</p> <p>1 medications.</p> <p>2 And what are those designed to try to help with?</p> <p>3 A With her anxiety and depression, as well as sleep.</p> <p>4 (Whereupon, a demonstrative aid was shown on the</p> <p>5 screen.)</p> <p>6 Q In October of 2018, it indicates that starting with one</p> <p>7 of these drugs she's experiencing nausea and that she's</p> <p>8 continuing to feel weak. "Pneumectomy two years ago. Has been</p> <p>9 weak and unable to climb stairs by herself since."</p> <p>10 So were these continuing issues from that surgery in</p> <p>11 2016 through October of 2018, and through the present?</p> <p>12 A Yes.</p> <p>13 Q And it says, "Her husband, who was present, is very</p> <p>14 frustrated and at his wits end."</p> <p>15 It can be difficult for a caregiver who was in a</p> <p>16 marriage where they were able to share their companionship and</p> <p>17 do activities together, when the spouse is essentially a 24-hour</p> <p>18 home care provider?</p> <p>19 A It's a tremendous challenge.</p> <p>20 THE COURT OFFICER: Judge.</p> <p>21 MR. BLOCK: Can I have five minutes, your Honor?</p> <p>22 THE COURT: Yes.</p> <p>23 MR. BLOCK: Thank you.</p> <p>24 (Whereupon, a demonstrative aid was shown on the</p> <p>25 screen.)</p>
<p>Moline - Plaintiff - Direct (Mr. Block) Page 2292</p> <p>1 before.</p> <p>2 (Whereupon, a demonstrative aid was shown on the</p> <p>3 screen.)</p> <p>4 Q And from later in 2018 to the present, have there been</p> <p>5 some CAT scans that have looked at Ms. Olson to see if there is</p> <p>6 any progression in her disease?</p> <p>7 A Yes.</p> <p>8 Q And we see a CT chest, a CAT scan report from Exhibit</p> <p>9 338, which is in evidence.</p> <p>10 And what does it indicate about Ms. Olson and about</p> <p>11 what's happening with her condition?</p> <p>12 A It shows that there's pleural thickening that has</p> <p>13 gotten worse since the prior scan three months earlier. And it</p> <p>14 was suspicious for progression or recurrence of her malignancy,</p> <p>15 of her cancer coming back to that area.</p> <p>16 (Whereupon, a demonstrative aid was shown on the</p> <p>17 screen.)</p> <p>18 Q And in August of 2018, it indicated that Ms. Olson, who</p> <p>19 at this point in August of 2018 is 65-years old, that she went</p> <p>20 to the emergency department with a severe anxiety attack. It</p> <p>21 says, "She mentions that she has been anxious over the past two</p> <p>22 years. She was never treated for anxiety before. Per husband,</p> <p>23 she wakes up in the middle of the night complaining that she</p> <p>24 hears noises." And it talks about the different medications</p> <p>25 she's prescribed. And we have Xanax and a number of other</p>	<p>Moline - Plaintiff - Direct (Mr. Block) Page 2294</p> <p>1 Q January 24th, 2019, so this year. What does it</p> <p>2 indicate about Ms. Olson's mesothelioma in terms of the</p> <p>3 progression and her condition?</p> <p>4 A It is showing that -- the CT shows that there's more</p> <p>5 progression of pleural thickening and nodularity, and she</p> <p>6 continues to have the fluid in the right chest, which is not</p> <p>7 uncommon, but she has the mild fatigue. And now she's having</p> <p>8 some chest tightness and pain, which she -- I don't believe she</p> <p>9 was describing early on after she recovered from the surgery,</p> <p>10 but that's a concern that the tumor might be infiltrating the</p> <p>11 chest wall.</p> <p>12 Q On January 24th, 2019, when they reviewed Ms. Olson's</p> <p>13 bodily systems, does she -- is she basically having difficulty</p> <p>14 in every area; respiratory, psychiatric, gastrointestinal,</p> <p>15 musculoskeletal?</p> <p>16 A Yes.</p> <p>17 Q And what is it about mesothelioma that causes this type</p> <p>18 of pain and discomfort, both mentally, physically in all areas?</p> <p>19 A Well, I mean, it's a diagnosis that is -- basically</p> <p>20 it's a fatal diagnosis, so that causes depression in most</p> <p>21 individuals.</p> <p>22 The shortness of breath is related to she only has one</p> <p>23 lung. And the nausea, the weakness, a lot of this are also</p> <p>24 related to the fact that she has a cancer. And the cancer can</p> <p>25 make people feel weak and nausea and have a decreased appetite.</p>

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1 Those are symptoms that are often related to cancer being
2 present in the body.

3 Q And based upon your review of all the medical records
4 and your experience and knowledge with the disease mesothelioma,
5 do you have an opinion within a reasonable degree of medical
6 certainty as to how long Donna Olson will continue to live with
7 mesothelioma before she dies from this disease?

8 A I mean, that's always challenging to be able to give
9 life expectancy. You can look at the literature and see how
10 people have done after having the procedure she had and this
11 cell type of cancer she had.

12 With this type of surgery, the average life expectancy
13 is usually about four years after the surgery. Given her
14 relative young age, she's had all the treatments, she's been
15 able to tolerate all the treatments, meaning she was able to
16 complete the treatments, um, so, you know, obviously I don't
17 have a crystal ball, but based on what it looks like, it looks
18 like there might be increased tumor recurrence, which is very
19 common, um, that it's about four years from when she first was
20 diagnosed. So that's about another year or so.

21 Q And based upon your knowledge and experience with the
22 disease mesothelioma what are the types of symptoms and pain and
23 suffering that Donna Olson is likely to experience in the months
24 and weeks and days leading up to her death from mesothelioma?

25 A She's going to develop more pain. She'll develop more

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1 shortness of breath. There's concern that the tumor will spread
2 to the left pleura, and then she only has one lung, so that will
3 lead to problems with more shortness of breath.

4 She could develop what we call "air hunger", where she
5 is literally hungry to get air in because she can't feel like
6 she could take a deep breath in. The tumor can often, as it
7 spreads in the chest wall, can be extraordinarily painful as it
8 invades the nerves.

9 She'll have constitutional symptoms like weakness and
10 nausea, decreased appetite. Eventually she'll become incapable
11 of getting up, she'll be so weak, and will require -- she'll
12 become bed bound and require total care, and eventually will
13 pass away.

14 Q Dr. Moline, we are out of time for today. I thank you
15 very much for your testimony today.

16 THE COURT: Thursday 9:30; correct?

17 MR. BLOCK: Yes, your Honor.

18 THE COURT: Jury, tomorrow I'll be handling other
19 matters. I'll see you Thursday at 9:30. Thank you so much.

20 (Whereupon, the trial was adjourned to Thursday,
21 March 7, 2019 at 9:30 a.m.)
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